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COMMERCIAL PAPER AND BILLS OF EXCHANGE OF THE WORLD.

Under the above named title we have published our tenth year book which we now have ready for distribution.

Owing to the changes brought about in the methods of discounting paper by the Federal reserve system, books heretofore published on this subject are more or less obsolete.

In gathering the facts for this work we have had the assistance of a number of thorough practical foreign exchange men in some of our leading banking institutions, credit men of some of the most prominent industrial exporting houses, and some of the leading commercial paper dealers; thus assuring the authenticity and practicability of the work.

The work is illustrated with facsimiles of regularly drawn credit instruments, accompanied by explanations of how they are discounted in the market, such as a bill of exchange and the functions it performs in the foreign exchange market; the documents used in financing the export trade; bankers' acceptances drawn against domestic and foreign transactions, and under the dollar credit; commercial letter of credit used in financing importations, and importer's guaranty; letter of credit issued in dollars; travelers cheques; foreign bankers' checks, and a Japanese promissory note and a bill of exchange with translations.

A special chapter is devoted to the Bank acceptance, showing how successfully this instrument operates in the discount markets of England, France and Germany, and what possibilities there are for it in this country.

As yet this form of credit is not thoroughly understood in this country, especially by the banking fraternity outside of New York, but it is believed by many, whose experience has taught them its true value in a discount market, that it is destined to be in this country, the same as in other countries, the chief credit instrument.

The practical working of foreign exchange is also a special feature of the work. Since the methods of exchange of international credits are not generally understood outside of the principal financial centers, we have undertaken an explanation of the operation of this branch of banking, illustrating it with a diagram made from a regularly drawn bill

of exchange, which points out how one draft may be made to settle two transactions in the international trade without the double shipment of money.

Other chapters are: The Credit System, setting forth the various forms of credit; the Banks and the Credit System, showing the bank's relation to the credit system; Commercial Paper in the United States, in which the merits of the single and two named paper are discussed; Commercial Paper in the Trades, wherein the methods of financing exports are explained, accompanied by facsimiles of the shipping documents. The Federal Reserve Boards definition of Commercial Paper Eligible for Rediscount; Bank Acceptances as Defined by the Federal Reserve Board, including the last regulation under date of July 15. Bills of Exchange in England; Commercial Paper in Canada; Commercial Paper in France; Commercial Paper in Germany; Commercial Paper in Japan, and The Origin of Commercial Paper and Bills of Exchange. All of which make a work of exceptional practical value.

In fact, no work of this character, containing illustrations of the various credit instruments used in the discount market, has ever before been published.

The book will be sent postpaid to any address in the United States for $1.50.

American Gold Imported. The arrival at Halifax, N. S., of a British warship with a consignment from the Bank of England of gold and securities estimated at about $100,000,000, was welcomed as a slight relief in the exchange situation: sterling at New York having declined to a new low level of 4.74½. The arrival at New York of the armored train with the part of the shipment on account of J. P. Morgan & Company developed that gold with a total value of $19,534,200 and securities believed to exceed $30,000,000 in value, was the extent of relief afforded. The securities would not equal the lowest record of a full day's sale on the stock exchange for many years past. The amount of gold received is also relatively unimportant compared to the excess of exports of the year. With the latest arrival, the total imports of gold since January 1, amount only to about $145,000,000, of which $20,000,000 previously came from London and $11,000,000 from France. On the other hand, our exports of gold to Europe during the past year amount nearly to $200,000,000. Making due allowance for English necessities, but also bearing in mind the enormous American credits granted to London, it is apparent that, if British credit in this country is to be maintained at a higher level of exchange, more gold must be imported. With fifteen months production stored in South Africa, and having no interruption to ocean traffic outside of the war zone, Americans feel that England is able to spare

it, to keep shipments moving to her relief without piling up obligations to this country.

Rival War Banks. Two great central banks act as fiscal agents of belligerents in the purchase of supplies from neutral countries. The Reichsbank is the agent of the Central Empires and Turkey. The Bank of England is the banker of England, France and Russia; the minor Allies purchasing from the most convenient of the three. The Russian purchases in this country are guaranteed by the Bank of England; the State Bank maintaining heavy gold credits in London for the purpose. Our Reserve banks are government banks and unable to act as fiscal agents of belligerents. France, though having direct communication and exchanges, must also deal with this country through the Bank of England which has direct relations with the American trade, and is a private bank unhampered by its government in dealing with American bankers outside of the Reserve banks. The Bank of England, having many interests to serve at home and accounts on every continent, makes its own arrangements and its payments in gold without reference to international affairs, for its own protection. The Morgan importation was hence a single phase of the banking plans.

The French Financial Minister, M. Ribot, estimated in his speech of June 3 to the French Parliament, that his government must during the next six months pay to the United States, Canada and England, a total of $300,000,000. He stated that Great Britain had agreed to assume liability for French purchases and furnish that vast amount of exchange upon deposit as security of an equal amount in French treasury bonds, repayable a year after the conclusion of peace, at a rate of discount not more than that paid on the British treasury bills, and to assure a better rate of exchange with the United States. In return for this guarantee, France agreed to advance to the British Government $100,000,000 in gold, to be furnished by the Bank of France which then held in stock about eight times the amount of the advance stated by M. Ribot. With the Russian, French, Indian, Egyptian, Argentina and American gold credits in hand, and in each case a liability, the bank has upheld in England the standard of gold payments, securing thereby the minimum costs of war, and also maintaining the vast credit operations of the British government.

England's Financial Strength. The American policy of decentralization of bank credit power, and jealousy of the power of capital, the main support of any government in emergency, is the cause of our present weakness in the protection of lives and property of our own people on the high seas. England's financial system and wealth is highly centralized and protected against all nations by the regulation of the Bank of England, which always works in harmony with the government to build up British in-

terests in foreign trade. The British contract to finance the purchases of the Allies, while upholding British trade and making provision for imports of merchandise, exceeding for the current fiscal year, two and a half billion dollars, is a titanic problem. It is not impossible, because of the vast resources of the Empire, but requires extensive mobilization for the time of war, and also for the reconstruction of capital to prepare for peace. If the Bank can hold up exchange even at the present low level, it will have accomplished more than any other nation in Europe. M. Ribot told his associates: "I have not thought by procuring the means of paying our debts to the United States, Canada and England, I succeeded in maintaining the exchange." His purpose in the arrangements with Lloyd George, the British Financial Minister, was not merely to settle "how to make payments for the shipments from the United States, but also to take what steps seem possible for regulating the New York Exchange." To this pass then has come the refusal of Congress to incorporate a Bank of the United States; that friendly nations must unite their bank credits to regulate New York exchanges of credits; must temporarily effect what is the duty of Congress to provide; and what was refused to pass in the Federal Reserve Act. In effect then the fiscal agency of the Bank of England for the Allies includes the additional burden of a country with a bank credit power of over 45 per. cent. of the world's exchanges.

Russia's Peace Negative. Petrograd reports appear to confirm the alleged offer of the Kaiser of a separate peace to Russia conditioned upon a new Partition of Poland, including the rich mines and manufacturing places. The German people are weary of losses of lives and fortunes, and view with apprehension the authorization of another billion dollar loan. They hoped to buy off Russia with barren Galicia, and peace, leaving Germany to dictate terms to other Allies. But this is Russis's war to protect Servia. Russia has nothing to gain by surrender of her domination in Balkan affairs; by abandonment of her French banker; by German possession of Egypt and the Suez Canal. Her dream of the centuries cannot be realized with German sovereignty of the Turk. William of Germany is in no position to dictate indemnities nor terms of peace to Russia, France or England. Russia's refusal shatters another German dream of empire.

Paper Money Inflation. The N. Y. Evening Sun of August 6 claimed that "the large increase in the stock of gold in the United States represents the losses of the precious metal to this country by the principal nations in Europe on account of the vast balance of trade in our favor." The Treasury returns show however that the exports of gold from the United States, most of

them to Europe, during the year to June 1, 1915, exceeded the imports by over $68,000,000. The BANKING LAW JOURNAL for July quoted figures from Treasury reports since 1895 showing that this country annually exported an average of $21,000.000 more gold than was imported. We based our statement upon official figures. The Evening Sun writer erred, Whatever increase of gold stock occurred in the United States during the past twenty years came from our own mines and not a dollar from foreign trade. Even the consignment of gold just received from the Bank of England was in double eagles. It is true that our per capita of money in circulation is $35.33, but of that per capita $30 is fiat money, or government notes purely "receivable." If we consider the gold certificates as gold in circulation, we may have $17 per capita in gold. But all over that is purely paper money, and without the backing of gold would depreciate as surely and even more than Canadian bank notes and Dominion notes in trade.

BANKING LAW.

Compulsory Cumulative Voting.

The announcement in the papers of the rejection of the compulsory cumulative voting amendment, by the committee on corporations of the New York Constitutional Convention, has caused many to make inquiries as to the nature of cumulative voting.

Cumulative voting is a device intended to give the minority stockholders a representation on the board of directors of the corporation. It is an expedient which cannot be resorted to unles permitted by the laws of the state in which the corporation exists. It means that each stockholder, in voting for directors, may cast a number of votes equal to the number of shares held by him multiplied by the number of directors to be elected. He may scatter his vote or he may concentrate it on one candidate.

To illustrate the manner in which this method of voting unables the minority to obtain representation, suppose that Smith owns 91 shares of stock in a corporation, which has a total of 1,000 shares outstanding and which is about to elect a board consisting of ten members. Under the cumulative voting plan Smith can elect one of the directors though he is opposed by all the other stockholders. His 91 shares multiplied by 10, the number of directors to be elected, give him 910 votes. If he casts all his votes for one candidate, that candidate is bound to be elected. The remaining stockholders, working together, would have but 9090 votes, and if they divided these equally among their own ten candidates, each candidate would receive but 909 votes.

While there undoubtedly are instances where a minority representation on the board would bring beneficial results, it is believed that

such instances are few, and they are more than set off by the damage which can always be done by a protesting minority, when vested with a little power. Where minority stockholders have a just grievance there is usually an efficient remedy open to them other than representation on the board. In any event a provision of this kind has no place in a constitution, especially a constitution such as New York's which, in all likelihood, will not be subject to change for a period of twenty years.

Guaranteeing the Payment of a Note.

In the department of the JOURNAL, devoted to inquiries and correspondence, there appears this month an inquiry from one of our subscribers, relative to the rights of a person who receives a note, on the back of which the payee writes a guarante of payment over his signature. In effect the inquiry is this: If the payee of a note writes on the back thereof, "I guarantee the payment of the within instrument," signs his name under the guarantee and delivers the note to another for value, does the party to whom the note is so delivered take a good title to the instrument? That is, does he take as good a title as though the payee had merely indorsed in blank? Or, does such a writing on the back of a note constitute merely a guaranty and not an indorsement, so that it is necessary for the transferee to obtain a further indorsement from the payee, before his title is complete. The answer is that by the great weight of authority the contract of guaranty, signed by the payee, transfers a good title. The guarantor is an indorsor and, in addition to his liability as indorser, he has assumed the responsibilities of a guarantor. But, it must be remembered that there is authority to the contrary and that this precise question has not come up in a number of states.

The inqury brings to mind a suggestion which may be of value to bankers. The suggestion is that they avoid contracts of guaranty on negotiable instruments. It is probably true that very few bankers can give a good reason for writing contracts of a guaranty on commercial paper. It is to be doubted if many lawyers could state offhand the rights of parties to a contract of guaranty and many a judge has wrinkled his brow over the intricacies of this class of agreements.

On the other hand the contract of indorsement is an agreement of clearly defined and well understood limitations. A blank indorsement, if coupled with a waiver of presentment, protest and notice of dishonor, will confer on the holder of the instrument every benefit that can be derived from a written guaranty of payment and the indorsement lacks the disagreeable features of the guaranty. The law of guaranty is in conflict and it is complex and uncertain. The rules which regulate the indorser's contract are simple and well understood. The contract of guaranty, especially when affixed to a nego-

tiable instrument, often gives the obligor an opportunity to escape liability. No such opportunities are presented to the indorser, unless the steps to charge him, demand and notice, are overlooked, and these steps do not figure when he has waived them.

One who indorses a negotiable instrument in blank warrants the genuineness of the instrument, the validity of his title, the capacity of prior parties and that the instrument was valid and subsisting at the time of his indorsement. In addition to this he agrees to pay the instrument, if it is dishonored upon presentment, and the necessary steps to charge him as indorser are duly taken. Now if the indorser writes over his signature a waiver of presentment, protest and notice, or if such a provision is written into the body of the note, his conditional liability becomes an absolute one. He is liable, without the taking of these steps, just as if he were a maker. What more could the holder of any bill or note ask for in the way of a guaranty of payment?

Agreement By Cashier That Note Will Not Be Enforced.

Beware of the bank cashier, who persuades you to execute a promissory note in favor of the bank upon the representation that the note will not be enforced by the bank. Notes arising out of such a situation have been sued on by the banks, to which they were payable, and have invariably been enforced by the courts. In this issue, among the legal decisions, we publish a case, recently decided by the Supreme Court of Oklahoma, Gillis v. First National Bank, in which the bank was permitted to recover upon a note, although the makers claimed that the note was executed without consideration, upon the representation of the cashier of the bank that they would not be called upon to pay it. "It is well established," said the Court, "that a bank cashier or president has no authority to promise a person, executing a note to the bank, that the maker will not be required to pay the note, and such a promise, if made, is not binding on the bank." The circumstances, under which the note was given in this instance, are not set forth in the opinion, but it clearly appears that the cashier's promise of immunity to the makers did not avail them.

Cases of this kind sometimes arise out of a little business deal between the cashier and some third person, in which each one expects to make a profit. Money is needed to finance the transaction and the cashier, not being in a position to provide the necessary security for a loan from the bank, takes in the third person, whose name on a note is sufficient security for the bank. The intention of both parties is that the note will be repaid out of the profits of the transaction. The third party relies to a certain extent upon the assurance of the cashier that the bank will not enforce the note, or at least that payment will

be extended until such time as the business deal is carried to a successful termination. Everyone connected with the transaction acts entirely in good faith, but something goes wrong with the deal and the expected profits do not materialize. The note falls due and no one in the bank except the cashier, has any knowledge of the arrangement between the cashier and the maker of the note. When the maker explains the situation to the other officers of the bank they are found to be without sympathy and interested only in collecting the amount due on the note. The bank insists upon payment and, if it is refused, brings suit with the result that the maker has to pay because the cashier had no authority to bind the bank by the agreement entered into between him and the maker.

A case, somewhat similar to the kind we are talking about, came up in Montana a few years ago. The title of the case was State Bank v. Forsythe, and the opinion of the court was published in the August, 1910 issue of the Journal. In that case the cashier of the plaintiff bank persuaded the defendant to give to the bank his note for $1,500, so that the cashier could take up some notes of his own, which the bank held. The cashier told the defendant that his note would look better to the bank examiner than the cashier's notes and promised the defendant that the bank would not hold him liable on the note. The The cashier turned in the defendant's note, took up his own notes and, as there was a little left over, he took the balance in cash. It was held that the cashier had no authority to make any such agreement with the defendant and that the fact that the defendant received no consideration for his note was no defense to an action by the bank.

Order In Which Indorsers Are Liable.

Ordinarily the several indorsers of a negotiable instrument are liable in the order in which they indorse. If A, B and C indorse a promissory note, in the order named, and C is obliged to pay the note at maturity, he may bring suit against A or B and will be entitled to recover the entire amount. The Negotiable Instruments Law provides, however, that evidence may be given to show that, as between or among themselves, the indorsers agreed otherwise. For instance, one of the indorsers may show that it was understood that each of the indorsers should be liable for a proportionate amount of the note in the event of its non-payment.

In the case of Strasberger v. Meyer, Strasburger & Co., and others, recently decided by the Appellate Division of the New York Supreme Court, and published herein on page 532, the action was brought by the last indorser of a promissory note against prior indorsers. The note was made by a corporation and was indorsed individually by the

president of the corporation, the treasurer, and by the plaintiff, who was vice-president of the company, in the order designated. The plaintiff paid the note and brought this action. In the trial court the plaintiff was permitted to recover against the prior indorsers and the treasurer, one of the prior indorsers, appealed. Upon appeal it was held that the plaintiff was entitled to recover from the appellant only to the extent of one-third of the amount, which she had been compelled to pay on the note. While there was no evidence as to any agreement among the indorsers that they should not be liable in the order in which they indorsed, the court held that they were doubtless impelled to become accommodation indorsers because of their common interest in the corporation and for the purpose of protecting their financial interests. "And in such circumstances," said the court, "the presumption arising from the order in which the names of the indorsers appear, if not overcome as a matter of law, is sufficiently overcome, at least, to raise a question of fact, as to whether it was not the intention of the parties to become jointly liable as sureties for the corporation, and not liable to one another according to the order of their respective indorsements."

In a dissenting opinion it was pointed out that the statute merely provides that evidence is admissible to show that the indorsers agreed that they should be liable otherwise than in the order of their indorsements and that there was no evidence of any such agreement in the case. On this ground it was contended by the dissenting justice that the plaintiff was entitled to recover the entire amount which she had paid on the note.

Accommodation Maker Held Liable.

One P. J. Hodgins was sued on a note, which he signed jointly with Eugene E. Hodgins. By way of defense the defendant contended that Eugene E. Hodgins was an infant and, therefore, not liable on the note, and that he, that is the defendant, signed merely as surety for Eugene E. Hodgins. From these facts the defendant contended that he was released from liability by the release of Eugene E. Hodgins because of infancy.

The Negotiable Instruments Law has accomplished a great deal in clearing up questions of liability in cases where the party sought to be charged on an instrument claims that he signed merely as a surety, and this case was decided under the provisions of the statute. Applying the provisions of the Negotiable Instruments Law, the court held that the defendant was an accommodation maker and not a surety and that he was liable on the note to a holder in due course. See the opinion of the Supreme Court of Oklahoma, in the case of Hodgins v. Northwestern Finance Company, on page 550 of this issue of the Journal.

THE LAW OF BANKING.

A COURSE OF STUDY IN THE LAW PERTAINING TO BANKS AND BANKING TRANSACTIONS.

BY JOHN EDSON BRADY OF THE NEW YORK BAR.

IV. PAYMENT OF CHECKS (Continued).

§ 146. **Payment of Checks of Insane Persons.**

While the insanity of a depositor revokes the bank's right to pay his checks, the bank is protected where it pays the check of an insane depositor in ignorance of the insanity. There is, however, authority to the effect that a check drawn by an insane person is absolutely void and that the drawee bank is not protected in paying such a check, even though the payment is made in good faith and without notice of the insanity.

§ 147. **Effect of Drawer's Death.**

The general rule is that the death of the drawer of a check before its payment or certification revokes the bank's authority to pay the check but that a bank is protected where it pays a check in good faith and without notice of the drawer's death. This rule is usually invoked in cases where the check in question was delivered without consideration, by way of gift. If a check, delivered for valuable consideration, should be paid with the knowledge that the drawer had died, it would seem that the bank should be protected, for in such a case, if payment were refused, the holder would have a valid claim against the drawer's estate. This question, however, has apparently not been passed upon by the courts, and the safest course for a bank to pursue is to refuse payment of a depositor's check where it has notice of his death, irrespective of the circumstances under which the check was given.

§ 148. **Agreement by Bank to Pay Check.**

When a bank accepts a deposit for the express purpose of paying certain checks designated by the depositor, it must devote the deposit to the payment of those checks. It cannot refuse payment of the checks so as to apply the deposit to the satisfaction of a debt owing to it from the depositor. If it does refuse payment it will be held liable in an action by the holder of the check. The rights of the holder of a check, given under such circumstances are superior to those of a garnishing creditor of the depositor. An agreement of this kind is not to be confused with a certification which the law requires to be in writing.

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§ 146. **Payment of Checks of Insane Persons.**—While the question of a bank's liability in paying the check of an insane depositor is one which arises very infrequently, it presents a situation, which has occasionally been passed upon by the courts and one which, therefore, should at least be mentioned in passing. Of course no bank would knowingly permit a lunatic to open an account with it; nor would it pay a check knowing that the drawer was not in possession of his mental faculties. But it is always possible that a depositor may be-

come insane and continue drawing checks on his bank after the loss of his reason. The question of a bank's liability in such circumstances has not been presented to the courts often enough to make it possible to state a general rule on the proposition. There are authorities, however, and it is believed that they express the better rule, to the effect that, while the insanity of a depositor revokes the bank's authority to pay his checks, the payment of the check of an insane person by a bank which is ignorant of the drawer's insanity does not subject the bank to liability. In other words, if a depositor in a bank, after opening his account, becomes insane and draws checks while insane, or if he draws checks while sane and becomes insane before the checks are presented for payment, the drawee bank is protected in either case if it pays the checks in good faith and without knowledge of the drawer's insanity. Two decisions, one from England and one from New York, may be cited in support of this proposition. Drew v. Nunn, L. R. 4 Q. B. Div. (Eng.) 661; Riley v. Albany Savings Bank, 36 Hun (N. Y.) 513.

Undoubtedly there may be facts present which would put the bank upon inquiry as to the sanity of the depositor and it would then become the duty of the bank to investigate for the purpose of obtaining more definite knowledge before honoring any checks drawn by the depositor. Just what circumstances would put a bank upon inquiry in a case of this kind is, of course, a question of fact, a question which would have to be determined with a view to the conditions presented in the particular case involved. In the case of Riley v. Albany Savings Bank, cited above, it was held that the fact that the drawer of a check is advanced in years, or is uneducated, does not impose upon the bank the duty of conducting an investigation as to his mental capacity before paying his checks.

The rule expressed above seems to be founded in fairness, but it cannot be said to be without opposition. In a Georgia decision, American Trust & Banking Co. v. Boone, 102 Ga. 202, 29 S. E. Rep. 182, it was held that a check drawn by an insane person is absolutely void and that a drawee bank is not protected in paying such a check, even though the payment is made in good faith and without knowledge of the drawer's insanity. The decision in this case is based upon the well settled principal of law that every contract presupposes that it is founded in the free and voluntary consent of the contracting parties. Applying this principle it is held that a bank check, like any other contract entered into by an insane person, is absolutely void, and that no person can gain any rights thereunder.

§ 147. **Effect of Drawer's Death.**—It is frequently stated in general terms by the courts that the death of the drawer of a check before its certification or payment by the drawee bank revokes the bank's authority to pay the check. Nevertheless, it does not follow, as a matter of course, that a bank, which pays a check after the death of

the drawer, must make good the amount of the check to the estate of the drawer.

In cases of this kind there are generally two points of inquiry, each of which has an important bearing on the liability of the bank. In the first place it is of the utmost importance to know whether the drawee bank paid the check with notice of, or in ignorance of, the death of the drawer. The law is well settled that, where a bank pays in the usual course of business a check drawn upon it, in ignorance of the fact that the drawer has died before the presentment of the check, the bank will be protected and may charge the amount of the check against the drawer's account. The check may have been delivered for a valuable consideration, or it may have been delivered by way of gift, but this has no bearing on the question here presented. The bank is protected in either event. This is one instance where ignorance protects. In re Stacey's Estate, 152 N. Y. Supp. 717. This decision was published in the June issue of the Journal at page 390.

It has been held that the death of the indorser of a check, after he has negotiated it, does not restrict its further negotiation, and that the payment of a check after the indorser's death, to the person to whom it was negotiated, does not render the drawee bank liable to the estate of the indorser. Brennan v. Merchants' & Manufacturers' Nat. Bank, 62 Mich. 343, 28 N. W. Rep. 881.

The second point of inquiry, in cases of this kind, should be directed to the transaction in which the check was delivered for the purpose of finding out whether or not the check was delivered for a valuable consideration. In most of the cases, in which it is attempted to charge a bank with liability for having paid a check after the death of the drawer, it will be found that the check was not delivered for value, but was intended as a gift from the drawer to the payee. In these cases the controlling element is still the knowledge or ignorance on the part of the bank as to the death of the drawer. If the bank pays the check with knowledge of the drawer's death, it will be held liable to the drawer's estate for the amount. While cases of this kind are unanimous in stating that the death of the drawer revokes the bank's authority to pay the check, the conclusion which they reach is based also upon the ground that the attempted gift is incomplete until the check is certified or paid by the drawee and that the death of the drawer before payment or certification renders the gift incapable of completion.

Where a check is delivered for a valuable consideration, it is not likely that any one will attempt to charge the drawee bank with liability, even though it paid the check with the knowledge of the drawer's death. In such a case the estate of the drawer is not depleted in any way. It is not like the case of an attempted gift of a check, where the next of kin, who do not share in the gift, are apt to

feel that their share in the estate of the drawer has been decreased by the amount of the check. It is probably for this reason that we are unable to find any decision, determining a bank's liability where it pays a check, delivered for value, with knowledge of the drawer's death. If such a case should come up there would seem to be no reasonable ground upon which to hold that the death of the drawer prior to presentment revokes it to such an extent as to render the drawee bank liable to the drawer's estate in the event of its payment of the check after knowledge of the drawer's death. If, in such circumstances, payment of the check is refused by the drawee, the holder of the check, having given value therefor, has an enforceable claim against the drawer's estate. The estate, therefore, loses nothing by the payment of the check. One thing is certain, however, and that is that a bank should refuse to honor any check where it has knowledge that the drawer of the check is dead. In doing so it is acting entirely within its rights and is taking a well justified precautionary measure.

148. **Agreement by Bank to Pay Check.**—It is not unusual for a bank to receive a deposit of money upon an express understanding with the person making the deposit that the bank will apply the money to the payment of a certain check, or number of checks, either already issued or about to be issued by the depositor. Sometimes it happens that the bank's customer is not in possession of the ready cash to deposit for such a purpose, but expects to obtain the money out of the transaction in which the checks are given. A man may, for instance, purchase grain, or some other commodity, for the purpose of shipping it to some other point where he has a prospective buyer, and arranges with the bank to honor the checks which he delivers in payment, upon taking proper steps to protect the bank from loss in the transaction. And it is not unusual for a bank to agree with its customer to honor checks drawn in such transactions, provided the customer delivers to the bank a draft with a bill of lading attached, representing the property purchased, and the proceeds or the draft are collected prior to the presentment of the checks.

After a bank has entered into an arrangement of this kind, it may find, when the checks in question are presented for payment, that the drawer is indebted to it and the bank may then attempt to apply the deposit to the satisfaction of its claim, to the detriment of the holders of the checks. Another common situation in transactions of this kind is met with where garnishment proceedings are instituted against the deposit by a creditor of the depositor, before the checks are presented by the holders. When a contingency of this kind arises a question is presented as to the respective rights of the bank, the depositor, the garnishing creditor and the check holders.

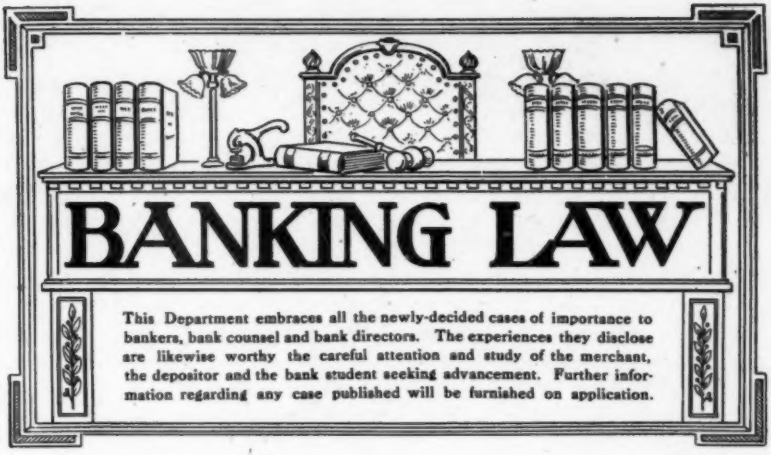
Ordinarily the holder of a check has no rights against the bank, upon its refusal to pay the check, no matter what may be the reason of the bank's refusal. His claim must be enforced against the drawer

or the indorsers of the check and, if the bank has acted wrongly in the matter, it is responsible to its depositor. But when the deposit is made under the circumstances outlined above the ordinary rule does not apply. Such a deposit is deemed to be a specific deposit, that is a deposit made for a specific purpose, and in general the bank will be held liable in accordance with the terms of the agreement entered into with the depositor, and the check holder, for whose benefit the agreement was made will be permitted to recover in an action against the bank, in the event of its refusal to pay the check. The right of the holder of the check, in such a case, to maintain an action against the drawee bank comes within the rule that a person may maintain an action on a contract made for his benefit, although he was not a party to the contract. Chanute National Bank v. Crowell, 6 Kan. App. 533, 51 Pac. Rep. 575.

It is not even necessary that the holder have knowledge of the arrangement between the bank and the drawer of the check, at the time he received it, in order that he may be entitled to recover in an action against the bank. Ballard v. Home National Bank, Kan., 136 Pac. Rep. 935. The contrary, however, has been held in at least one instance. First National Bank v. Petit, 41 Ill. 492. In this case it was held that the holder of a check could not recover in an action against the drawee bank, although the drawer had deposited money in the bank for the particular purpose of paying the check, on the ground that it appeared that the holder had no knowledge of the agreement between the drawer and the bank at the time he received it.

In the ordinary case, that is to say in a case involving the usual checking account, the bank may apply the deposit to the payment of any indebtedness, owing to it from the depositor. If the bank holds one of his notes, and he has a deposit in the bank at the maturity of the note, the bank may apply the deposit to the payment of the note. If such application uses up the deposit the bank is under no obligation to pay any of the depositor's checks subsequently presented and cannot be held liable for a refusal to pay the check at the instance of either the depositor or holder of the check. But, where a bank accepts a deposit, upon the express understanding that it will devote the money to the payment of certain checks designated by the depositor, it will be required to live up to that agreement. The depositor may overdraw his account by other checks before the designated checks are presented, or paper on which he is liable and which is held by the bank may fall due, or he may become indebted to the bank in some other manner. The bank will not, however, be permitted to apply the special deposit to the satisfaction of this indebtedness. The holders of the designated checks have a prior right in the deposit and a right which the courts will enforce.

(*To be Continued.*)



BANKING LAW

This Department embraces all the newly-decided cases of importance to bankers, bank counsel and bank directors. The experiences they disclose are likewise worthy the careful attention and study of the merchant, the depositor and the bank student seeking advancement. Further information regarding any case published will be furnished on application.

CASHIER'S PROMISE THAT NOTE WILL NOT BE ENFORCED.

Gillis v. First National Bank of Frederick, Supreme Court of Oklahoma, May 11, 1915. 148 Pac. Rep. 994.

A cashier has no authority to promise a person executing a note to the bank, that the note will not be enforced and such a promise, if made, is not binding on the bank.

Action by the First National Bank of Frederick, Okl., a corporation, against J. Angus Gillis and another. Judgment for plaintiff, and defendants bring error. Affirmed.

HARDY, J. This is an action upon a promissory note executed by the plaintiffs in error to the defendant in error. The defendant in error had judgment in the court below, and plaintiffs in error appeal. The execution of the note by the defendants is admitted in the answer, but it is alleged that same was without consideration and was executed upon the representations of the cashier of the plaintiff bank that they would not be called upon to pay the same, and that some time about April, 1910, defendants assigned to plaintiff certain stock in the Oklahoma National Life Insurance Company in full settlement and payment of the note.

The action of the court in giving instructions No. 5, 8, and 9 is complained of. These instructions submit to the jury the question as to whether the cashier had authority to enter into an agreement with the makers of the note at the time the same was executed that they would not have to pay it; while instruction No. 9 also submits to the jury the question as to whether or not the stock of the Oklahoma National Life Insurance Company had been accepted by the cashier in

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement § 337.

payment and satisfaction of the note, and also submits the question of his authority so to do.

At the outset we are confronted with this proposition: Whether or not, taking all of the evidence offered on behalf of defendants, under any view of the case, they would be entitled to urge as a defense therein the alleged agreement with the cashier that they would not have to pay the note.

We shall consider instructions No. 5 and 8 together, which submit to the jury the question as to whether or not the cashier had the authority to make such an agreement with the defendants at the time the note was executed. The cashier had no such authority, and this question was not properly in the case, and the defendants had no right to have same submitted to the jury upon any theory; and the giving of the instructions cannot be complained of. Section 942, Rev. Laws 1910, provides:

"The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its subject-matter, which preceeded or accompanied the execution of the instrument."

By this section it is provided that where a contract is reduced to writing, that the writing itself is the evidence of the agreement of the parties, and that all oral negotiation or stipulations concerning the subject-matter which occurred prior to the execution of the writing are superseded by it, and oral evidence cannot be given to contradict the writing thus executed. It is a very general rule that a negotiable promissory note comes within the language of this statute, and, when once executed, parties will not be permitted to show, by parol testimony, that an agreement was had with the payee or holder of such paper not to enforce payment against the person of persons liable thereunder. Thisler et al, v. Mackey, 65 Kan. 464, 70 Pac. 334; 17 Cyc. 589. And it is well established that a bank cashier or president has no authority to promise a person executing a note to the bank that the maker will not be required to pay the note, and such a promise, if made, is not binding upon the bank. Bank v. Bank, 1 Bliss, 146, Fed. Cas. No. 12,309; Mead v. Pettigrew, 11 S. D. 529, 78 N. W. 945; Thompson v. McKee, 5 Dak. 172, 37 N. W. 367; Bank v. Hart, 37 Neb. 197, 55 N. W. 631, 20 L. R. A. 780, 40 Am. St. Rep. 479; Bank v. Foote, 12 Utah, 157, 42 Pac. 205; Kennedy v. Bank, 7 Neb. 59; Bank v. Tisdale, 18 Hun (N. Y.) 157; Davis v. Randall, 115 Mass. 547, 15 Am. Rep. 146, Loomis v. Fay, 24 Vt. 240; Bank v. Dunn, 6 Pet. 51, 8 L. Ed. 316.

Under these authorities the agreement, even if made, would not be of any binding force, and could not be urged as a defense to an action on the note, and the court having submitted it, even though the instructions were erroneous, the defendants cannot complain; and we cannot reverse this cause for alleged error in giving said instructions

for the reason that in so doing the defendants were not prejudiced. Rev. Laws 1910, §6005.

The objections to instruction No. 9 present substantially the same questions that are urged in criticism of instructions No. 5 and 8. In No. 9 the court in effect told the jury that if the cashier accepted an assignment of the insurance stock in satisfaction of the note sued on, that if he had such authority, still he would only have such authority on condition that the claim was doubtful, and that the burden of proof to establish such authority and also to establish that the claim was doubtful was on the defendants. In their brief counsel do not claim that this transaction was a settlement of a pre-existing indebtedness by the assignment of the stock, but urge that the stock was a fundamental part of the original transaction, and was a moving cause for the execution of the note, and that there would not have been any indebtedness or apparent indebtedness to the bank except for the agreement involving the stock; and the criticisms of the instructions are based upon this position. This view of counsel eliminates from our consideration the question as to whether or not the cashier had the authority, under the facts of this case, to accept an assignment of the stock in payment of a pre-existing indebtedness, and leaves only the questions already considered under the objections to instructions No. 5 and 8.

We have already determined that the cashier had no authority to make such an agreement, and having so determined, the question of error in the instruction submitting the issue cannot be complained of because the defendants had no right to have this question submitted to the jury upon any theory.

In the ninth assignment of error complaint is made of the action of the court in admitting certain evidence, all of which went to the question of the authority of the cashier to make the agreement alleged by defendants to have been made at the time the note was executed. In the view we take of the case this evidence was wholly irrelevant to any issue that might be lawfully inquired into, but inasmuch as it only went to prove that the cashier had no authority to execute the agreement relied upon by defendants, in view of our conclusion that as a matter of law no such authority existed, the admission of this evidence would be harmless, and defendants could not be heard to complain by reason thereof, because no prejudice could have resulted to them and none did result from the admission of this evidence.

The testimony in the depositions which defendants sought to suppress also goes to the same point, and while the court committed error in overruling the motion to suppress, yet the admission of this evidence was harmless; and seeing no prejudicial error in the record, the judgment of the trial court is therefore affirmed. All the Justices concur.

ORDER IN WHICH INDORSERS ARE LIABLE.

Strasburger v. Myer Strasburger & Co., New York Supreme Court, Appellate Division, April 9, 1915. 152 N. Y. Supp. 757.

Where officers and stockholders of a corporation indorse, as officers and individuals, a note made by the corporation they are not liable as a matter of law in the order in which they indorse. The circumstances raise a question of fact as to whether it was not the intention of the parties to become jointly liable as sureties.

Appeal from Trial Term, New York County.

Action by Sarah Strasburger against Myer Strasburger & Co., Incorporated, Samuel M. Strasburger and Patrick J. Hangley. Judgment for plaintiff on directed verdict and motion for new trial overruled, and defendant Hangley appeals. Reversed and remanded, unless a stipulation reducing recovery is filed.

Argued before INGRAHAM, P. J. and MCLAUGHLIN, LAUGHLIN, CLARKE and SCOTT, J. J.

LAUGHLIN, J. The recovery was upon a promissory note on the theory that the appellant was liable to the plaintiff as a prior indorser. Myer Strasburger, deceased, was engaged in business in the borough of Manhattan, New York, as an insurance broker, until his death on the 2d day of August, 1911. The appellant had been associated with him in that business. On the 5th day of November, 1911, a corporation was organized by the plaintiff, who was the widow of the decedent, and his son, Samuel M. Strasburger, and the appellant, under the name of Myer Strasburger & Co., Incorporated, with a capital of $5,000, consisting of 50 shares, for the purpose of continuing the insurance business theretofore conducted by the decedent. The plaintiff took 30 shares of the capital stock and was elected vice president. The appellant took 16 2-3 shares and was elected secretary and treasurer; and Samuel M. Strasburger took 3 1-3 shares and was elected president. The plaintiff's son and the appellant conducted the business.

In the summer of 1913 the corporation was in need of funds, and an effort was made to obtain a loan from the Columbian Bank. Evidence was given in behalf of appellant tending to show that he and Samuel M. Strasburger caused a note for $2,500 to be made in behalf of the corporation, dated June 18, 1913, to order of said bank, payable in four months, and signed in the name of the corporation by Samuel M. Strasburger as president, and by the appellant as treasurer, and they indorsed it as president and treasurer, respectively, and presented to the bank for discount; that the bank refused to discount it without their individual indorsements and the indorsement also of the plain-

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement, § 239.

tiff; that thereafter they indorsed it individually, following the indorsements already upon it by them in their official capacity, Samuel M. Strasburger signing first and the appellant next, and then caused it to be presented to the plaintiff, who indorsed it after the name of the appellant. There is no evidence of any express agreement between the plaintiff and her son and the appellant, or between her and the appellant, with respect to her indorsement, or with respect to whether any information was communicated to her other than the presentation of the note for indorsement. The note was then presented to and discounted by the bank, and the proceeds were used in the business of the corporation as contemplated. The corporation was unable to pay the note in full at maturity, and the plaintiff paid the balance and received the note, and thereupon brought this action.

The common interest of the plaintiff and her son and the appellant as owners in separate shares of the entire capital stock of the corporation, doubtless impelled them to become accommodation indorsers, with a view to protecting their financial interests; and in such circumstances the presumption arising from the order in which the names of the indorsers appear, if not overcome as a matter of law, is sufficiently overcome, at least, to raise a question of fact, as to whether it was not the intention of the parties to become jointly liable as sureties for the corporation, and not liable to one another according to the order of their respective indorsements. See Easterly v. Barber, 66 N. Y. 433; George v. Bacon, 138 App. Div. 208, 123 N. Y. Supp. 103. The court refused appellant's request to go to the jury, which we think should have been granted. The plaintiff, however, would in any event be entitled to contribution from the appellant to the extent of one-third of amount she was obliged to pay, together with interest thereon from the date of payment. See George v. Bacon, supra. She paid $2,236.03 on the 30th day of October, 1913. If she wishes to stipulate to reduce the recovery to the amount to which she is clearly entitled as matter of law, there is no occasion for a new trial.

It follows that the judgment and order should be reversed, and a new trial granted, with costs to appellant to abide the event, unless the plaintiff stipulates to reduce the recovery to $789.81, in which event the judgment is modified and affirmed without costs.

McLAUGHLIN, CLARKE and SCOTT, J. J., concur.

INGRAHAM, P. J. (dissenting). I think this judgment ought to be affirmed. There is absolutely no evidence, so far as I can see, that would justify a jury in finding that there was any agreement that the indorsers on this promissory note should be jointly liable as sureties for the corporation. In the prevailing opinion it is assumed that the plaintiff and her son and the appellant were doubtlessly impelled to become accommodation indorsers with a view to protecting their financial interests. This is pure assumption, merely based upon the fact that the plaintiff owned some capital stock in the corporation for whose

accommodation the note was given. The plaintiff had nothing to do with the actual management of the business of the corporation. She indorsed the notes after the other individual indorsers, and I think was entitled to the benefit of section 118 of the Negotiable Instruments Law (Consol. Laws, c. 38) which provides:

"As respects one another, indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show as between or among themselves they have agreed otherwise. * * * "

To justify the court in disregarding this express provision of law, there must be evidence to show that as between themselves they have agreed otherwise. It is conceded that there was no such evidence, except a presumption which arises because of the fact that the plaintiff had owned stock in the corporation. This seems to me to be utterly insufficient to justify the presumption of an agreement to be jointly liable as sureties for the corporation. It is not, as I view it, the intention of the parties that controls, but to justify a reversal of this judgment there must be evidence of an agreement between the indorsers. George v. Bacon, 138 App. Div. 208, 123 N. Y. Supp. 103, relied upon by the appellant, presented an entirely different state of facts. There, there was evidence that the court held justified the inference of an express agreement. In this case there is no such evidence, except the mere fact that the plaintiff was the owner of stock of the corporation; and the mere fact that the plaintiff was the owner of stock of the corporation for whose accommodation the note was given is not evidence to sustain a finding of such an agreement.

HOLDER IN DUE COURSE OF CHECK.

German-American Bank of Seattle v. Wright, Supreme Court of Washington, May 12, 1915. 148 Pac. Rep. 769.

The drawer of a check delivered it to the payee, in payment of certain shares of stock, to be delivered in about sixty days, with the understanding that the check should not be negotiated until the delivery of the stock. About five weeks later the payee indorsed the check to the plaintiff bank as security for an existing loan and for a further loan, then made by the bank. It was held that the bank was a holder in due course and, as such, entitled to recover against the drawer and indorser to the extent of its lien.

Department 2. Appeal from Superior Court, King County.

Action by the German-American Bank of Seattle against A. H. Wright and another. Judgment for plaintiff, and defendants appeal. Affirmed.

ELLIS, J. This is an action to recover upon a check drawn by the defendant Wright upon the Lincoln County Bank of Merrill, Wis., pay-

NOTE.—For other similar decisions see Banking Law Journal Digest, and Supplement §§ 224, 225.

able to the defendant Cavette, and by him indorsed to the plaintiff. The facts are these:

On February 21, 1912, Wright, in the city of New York, made his ordinary bank check of that date upon his bank of deposit in Merrill, Wis., to the order of the defendant Cavett for $5,000, and delivered it to Cavett. At that time Cavett who was engaged in an effort to reorganize a certain fisheries company, agreed to deliver to the defendant Wright $15,000 worth of the fisheries stock about 60 days from the date of the check. Cavette testified that the check was given on account of this contract and as part payment on the stock; that the reorganization was to be completed about April 1st, and the stock was to be delivered about April 21, 1912; and that in case he did not deliver the stock, he was to return the check to the defendant Wright. He also testified, and the fact is not disputed that, at the time of receiving Wright's check he (Cavette) gave to Wright his own check for the same amount drawn on the plaintiff bank as security to Wright that Cavette would carry out the contract. Cavette returned to his home in Seattle about March 1, 1912, and about March 30th solicited a loan of $700 from the plaintiff bank. He was already indebted to the bank in the sum of $1,800, and the loan was declined unless he would give security, not only for the $700, but also for this antecedent indebtedness. He thereupon offered this check as security promising to repay the whole debt, including the $700 in 20 days, and requested the bank to hold the check that length of time, agreeing to take it up, together with his note, at the end of that period. The bank officials, knowing that Wright was solvent, and, as the cashier testified, believing the check good, loaned Cavette the additional $700, taking his note therefor, due in 20 days, and extending the time of payment of the former indebtedness of $1,800 for the same time; Cavette indorsing the check to the bank as collateral for the loan and the extension. The transaction was negotiated through the bank's cashier acting for the bank. Cavette testified that he told the cashier that the check was a contract check, and that, if he delivered the stock, he was to get the money; that he did not go into details, but simply told the cashier that it was a contract check and that he had to deliver the stock to Wright; that he asked the cashier to hold the check for 20 days as collateral to the loan, and that he thought he would be able to finish the whole transaction within 20 days; that nothing was said as to what was to become of the check at the end of that time, but that he (Cavette) expected to take up the note and check before that time and, if he failed to do so, he supposed that the natural proceeding would be for the bank to send the check on for collection. Cavette further testified that at one time Wright had made a deposit in the bank to Cavette's credit, but that it was not to take care of any obligation to the bank. Wright testified that the check was not to be used for any purpose until Cavette delivered the stock to him; that the stock was to be delivered within 60 days, and, if not then deliver-

ed, the check was to be returned. It is admitted that the stock was never delivered.

The bank held the check until April 22nd when, the note to which it was held as collateral being unpaid, the plaintiff bank wired the Wisconsin bank on which the check was drawn inquiring whether there were funds there to meet it, and at first received an affimative reply, but later in the day received a further message that payment on the check had been stopped by Wright. The check was then forwarded for collection, payment was refused, and the check protested. This suit was then brought against Wright, as maker, and Cavette, as indorser, of the check; the plaintiff suing as owner. In their answers both defendants alleged that the check was taken by the bank as collateral security, and this fact, as we have seen, was established by the evidence. The case was tried to the court without a jury. The court found that the bank was a holder in good faith for value and without notice of any equities between Wright and Cavette; that it received the check as collateral to the prior debt and the loan in the usual course of business. Judgment was rendered for the plaintiff against both of the defendants for the amount of the loan and the antecedent debt, aggregating $2,500, with interest from the date of the presentment, and the protest fees. Both defendants have appealed.

The second question as to whether the respondent was a holder for value in due course is twofold:

(a) The appellants claim that respondent was not a holder for value because it held the check as collateral in part to an antecedent debt. Our statute, however, effectually disposes of this question, contrary to the appellant's claim. The Negotiable Instruments Act, reference being made to 2 Rem. & Bal. Code by section numbers, reads:

"Sec. 3415. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

"Sec. 3416. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

"Sec. 3417. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

"Sec. 3418. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien."

Clearly the respondent had a lien on the instrument arising from contract, and, as declared by the last section above quoted, it was a holder for value to the extent of that lien.

(b) It is next contended that the respondent was not a bona fide holder in due course because it took the check about five weeks after it was drawn, and to secure a then credited debt of only $700 in addit-

ion to the antecedent debt of $1,800. We shall assume, for the purpose of present discussion, that the check had been held by Cavette for an unreasonable time; that is, for such length of time, when it was taken by the respondent, as to put the respondent on inquiry and charge it with notice of the facts then existing. The appellants contend that for that reason the Negotiable Instruments Act (2 Rem. & Bal. Code, § 3444) makes the respondent not a holder in due course but charges it with bad faith. That section reads:

"Sec. 3444. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course."

That section, however, is general and is apparently modified, so far as checks are concerned, by later sections of the same act, relating specifically to checks, which read as follows:

"Sec. 3575. A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

"Sec. 3576. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon *to the extent of the loss caused by the delay*."

The words which we have italicized mark the limits of the rule as applied to checks. It is obvious that, while the taker of a stale check is not an unqualified holder in due course, he is such holder, except in so far as the drawer of the check is able to show that he has been injured by the delay. The statute can mean nothing else. This is also in keeping with the rule as it existed under the law merchant.

The record here is barren of evidence that, had the check been presented immediately after it was drawn, Wright, the drawer, would have been in any better position than he now is. No "loss has been caused by the delay." If Cavette had any right to use the check at all, it is obvious that his delay in using it caused Wright no injury or loss.

If we charged respondent with knowledge of everything that its cashier could have learned at the time he took the check, it would merely be charged with knowledge that the check was given in connection with an executory contract for the purchase of certain stock to be delivered in 60 days from the date of the check, which time had almost 30 days yet to run before breach by failure to deliver the stock could occur. True, the appellant Wright testified that the understanding was that the check would not be negotiated until the stock was delivered, and Cavette testified that he was to return the check if he failed to deliver the stock but did not testify that he made any such statement to the bank. The evidence is undisputed that, when Wright gave this check to Cavette, Cavette gave Wright his own check on the respondent bank for the same amount to secure the carrying out of the stock transaction. Wright must have intended something by the delivery of his unqualified check to Cavette. It was not even postdated.

It was clearly intended either as a payment on the purchase price, as Cavette testified it was, or as an advancement of Wright's credit to Cavette upon the strength of the executory contract. The fact that there was an exchange of checks between Wright and Cavette can only be explained on the theory that Cavette was to use Wright's check to obtain credit which he otherwise would have been unable to obtain. Charging the respondent, therefore, with knowledge of the executory contract, and that the check was given in connection therewith, is still far from establishing appellant's charge of mala fide. The contract to deliver this stock was still executory. It was a valuable consideration for the check whether the check be considered as an actual payment thereon or as an advancement of Wright's credit to Cavette by reason thereof. No failure of consideration had then occurred.

At the time the respondendent took this check, Cavette's title thereto was not defective, as defective titles are defined by the Negotiable Instrument Act. Rem & Bal. Code, § 3446. Cavette did not obtain the check or Wright's signature thereto by fraud, duress, or other unlawful means or for an illegal consideration, nor can we say that his pledging the check to the bank, while the contract was still executory, was such a breach of faith as amounted to fraud, much less than it would, as a matter of law, charge the bank with notice of fraud. Since, under the evidence, Cavette's title was not defective when he pledged the check, section 3450 of the Negotiable Instruments Act does not impose upon the bank, as an indorsee, the burden of showing that it was a holder in due course:

"Sec. 3450. (Every) holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. * *

Viewing the whole transaction in the light of all of the evidence, and applying the clear provision of the Negotiable Instruments Act, we are forced to the conclusion that the respondent was a holder of the check for value and in due course and is not chargeable with bad faith in the premises. Having taken the check as security, it is deemed holder for value to the extent of its lien.

Finally, and aside from all technical rules of law, it seems to us that the trial court reached the correct result. The appellant Wright gave the appellant Cavette his negotiable check without any indicia whatever that it was not to be negotiated. The check, as we have noted, was not even post-dated. If the check was not to be used, the reasonable thing, and that which would have absolutely protected the bank, would have been not to issue it. To permit an alleged secret agreement between the maker and the payee of a check, to which they have given currency, to defeat the check and relieve the maker from all liability thereon, would be to place all of the care and caution touch-

ing negotiable paper upon the taker rather than upon the maker, thus reversing, not only the theory of the law merchant and the negotiable Instrument Act, but also the well-known rule of equity that he who makes a loss possible should suffer the loss.

The judgment is affirmed.

MORRIS, C. J., and MAIN, CROW and FULLERTON, JJ., concur.

NOTE OBTAINED BY FRAUD.

McCowen v. Barnett, Supreme Court of Louisiana, March 22, 1915. 68 So. Rep. 102.

Where a notary procured the maker of a mortgage note to sign a new note, upon the false representation that the original note had been destroyed, the maker was liable on both notes to those who purchased them in due course from the notary.

Action by Mrs. Elizabeth McCowen against W. M. Barnett and others. A judgment for defendants was modified on appeal to the Court of Appeal, and plaintiff applies for certiorari or writ of review. Judgment of Court of Appeal annulled, and that of district court amended, and rehearing denied.

O'NEIL, J. Desiring to borrow $1,500, the plaintiff gave an act of mortgage on her property in New Orleans, before James J. Woulfe, notary public, on the first of June, 1911, and issued her note for that sum, bearing 7 per cent. interest, and payable one year after date. About two years later there was a sensational disclosure that Mr. Woulfe had been for years systematically making and negotiating forgeries of promissory notes purporting to be secured by acts of mortgage executed before him.

The plaintiff was then informed by four persons, namely, Walter M. Barnett, Emile L. Schlieder, Thomas J. Kilbride and Demcey D. Colley, that each of them held a note purporting to be the mortgage note signed by her.

Alleging that she had only signed one note of $1,500, the plaintiff filed suit against the four parties, and enjoined each of them from foreclosing the mortgage until it could be judicially determined who had the genuine note. At the same time she deposited $1,701.87 into the registry of the court, in payment of the principal and interest of note, and prayed that the deposit be paid over to the defendant who should establish the genuineness of his note, and that the mortgage be canceled.

The defendant Walter M. Barnett and his wife, Mrs. Fannie Lion Barnett, in their answer, alleged that Mr. Barnett had acquired the note as the agent of his wife. They denied that the plaintiff had

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement § 227.

signed only one note to represent the debt secured by the mortgage. They alleged that there were other such notes outstanding, but that Mrs. Barnett held the original and genuine note. They prayed that the amount deposited by the plaintiff be paid over to Mrs. Barnett, and that she have judgment for the balance of the accrued interest, attorney's fees and costs, with recognition of her mortgage securing the same.

The other defendants filed answers similar to that of Mrs. Barnett, each claiming to be the holder and owner of the original and genuine note. Messrs. Kilbridge and Colley (and one Coulon, who appeared as holder of a fifth note) were subsequently convinced, and admitted at the trial, that their notes were forgeries; and their demands are eliminated from the case.

Our review of the testimony brings us to the conclusion of facts found by the Court of Appeal. Mrs. Barnett is the owner of the original note which was signed by the plaintiff at the time she executed the act of mortgage. This note was purchased by Mr. Barnett for his wife for $1,500 on the 2d of June, 1911, as is shown by his testimony, corroborated by the canceled check in evidence.

The note held by Mr. Schlieder was purchased by him from the notary, Woulfe, on the 31st of October, 1911, and our conclusion is that it bears the genuine signature of the plaintiff, obtained by fraud on the part of the notary, but not on the part of Mr. Schlieder. When the notary proposed to sell a mortgage note of $1,500 to Mr. Schlieder, some time in October, 1911, the latter insisted that, as he had suffered a loss by the fraudulent practices of another notary public, he would not buy any note unless he saw the maker sign it. Mr. Woulfe then proposed that, as Mrs. McCowen had already signed the note dated the 1st of June, 1911, he would have her to appear at his office and sign another note of that date and destroy the one he held. He sent for Mrs. McCowen, telling her that the party who had agreed to purchase her note insisted upon seeing her sign it, and she appeared at the notary's office, where in the presence of Mr. Schlieder and the notary, she signed a new note dated the 1st of June, 1911, corresponding with the mortgage note which she had signed when she executed the act of mortgage. Thereupon the notary exhibited and destroyed what he declared to be the original note, which, however, Mrs. McCowen and Mr. Schlieder both admit they did not examine. There is no doubt that the note which the notary destroyed was one of his forgeries, because the genuine original mortgage note was then in the possession of Mrs. Barnett. The plaintiff admits all of the foregoing circumstances regarding the signing of a new note in the presence of Mr. Schlieder and the destruction by the notary of what he declared was the original note. But she declares that this occurred on the same day on which she signed the act of mortgage. She says that she signed the original note and the act of mortgage in the forenoon, and, at the

request of the notary, she returned that afternoon and signed the new note in the presence of Mr. Schlieder. Our conclusion is that the plaintiff is mistaken as to the date on which she signed the note held by Mr. Schlieder. His original check indorsed and collected by the notary public is dated October 31, 1911, and is for the sum of $1,543; the interest for the five months being $43.75.

Mr. Schlieder knew very well that the note which he received was a substitute for the original mortgage note, and he took the notary's word for it that the note destroyed was the genuine original note, which, as a matter of fact, was then in the possession of Mrs. Barnett. There was no intention on the part of Mr. Schlieder or of Mrs. McCowen to increase the mortgage security to $3,000, or to make a second mortgage for $1,500. Hence we find no authority nor reason for holding that the note held by Mr. Schlieder is secured by a second mortgage on the plaintiff's property.

The interest on Mr. Schlieder's note was paid by the notary, Woulfe, to June 1, 1912.

For the reasons assigned, the judgment of the Court of Appeal is annulled. The judgment of the district court is amended by condemning the plaintiff to pay to the defendant E. L. Schlieder $1,500, with interest at 7 per cent. per annum from the 1st of June, 1912, and 5 per cent. attorney's fees, and, as thus amended, the said judgment is affirmed and reinstated. Each litigant is to pay the costs incurred by him or her in the district court, the plaintiff is to pay the costs in the Court of Appeal, and the defendant Schlieder is to pay the cost of the proceedings in this court.

ACCOMMODATION MAKER OF NOTE.

First State Bank of Nortonville v. Williams, Court of Appeals of Kentucky, April 15, 1915. 175 S. W. Rep. 10.

The accomodation maker of a note is not entitled to notice of dishonor and is not discharged by an agreement between the payee and the principal maker, extending the time of payment though made without the assent of the accomodation maker.

Appeal from Circuit Court, Hopkins County.

Action by the First State Bank of Nortonville and Otho Fowler, as its liquidating agent, against C. S. Williams and another. From a judgment for defendant Williams, plaintiffs appeal. Reversed and remanded, with directions.

CLAY, C. In the year 1909 John B. Brasher and C. S. Williams executed their promissory note for $500, payable to the order of the First State Bank of Nortonville. The company went into liquidation,

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, §22, 323.

and was placed in the hands of Otho Fowler, as liquidating agent. On September 1910, the note was renewed by the same parties by the execution of a new note for $500 payable three months after date to the order of Otho Fowler, as liquidating agent, and negotiable and payable at the Farmer's National Bank of Madisonville. Though a joint maker, Williams was a mere accommodation maker, or surety, and this fact was known to the bank and its liquidating agent. After maturity of the note Williams told Brasher that Fowler was going to sue on the note if he did not fix it up, and to see Fowler at once. Brasher went to Fowler and told him that, if the bank would not bring suit, he would pledge as collateral for the note a certain $5,000 note which was already up as collateral at the bank to secure another note for the sum of $1,000 due from Brasher to the bank. Fowler said: "All right." Brasher's understanding was that suit would not be brought on the note, and, in fact, none was brought. After Brasher made this arrangement he met Williams and told him that he had arranged the note, and no suit would be brought. Williams was not present when the arrangement was made.

This action was brought by the bank against Brasher and Williams to recover on the note. Williams defended on the ground that he was a mere surety on the note, and this fact was known to the bank and its liquidating agent, and that he had been released by the liquidating agent's failure to give him notice of dishonor, and by extension of the time of payment given to Brasher as principal without his consent. The law and the facts were submitted to the court without the intervention of a jury. The court held, as a matter of fact, that there was a valid contract for the extension of the time of payment for a definite period of time, and that, as a matter of law, Williams was released from liability on the note. Judgment was entered accordingly, and the bank appeals.

Of course, appellee's first contension that he was released for want of notice of dishonor is without merit. It is well settled that, under the Negotiable Instruments Act (Laws 1904, c. 102), an accomodation maker or surety is primarily liable, and is therefore not entitled to notice of dishonor. Fritts v. Kirchdorfer, 136 Ky. 643, 124 S. W. 882.

The other question presented is whether or not, under the Negotiable Instruments Act, an accommodation maker of a negotiable instrument is released by an extension of time for payment granted to his comaker or principal, without his knowledge or consent. With singular unanimity the various courts that have considered this question answer it in the negative. Their reasons for so holding may be briefly summarized as follows:

The Negotiable Instruments Act was adopted by the several states for the purpose of establishing uniformity in the law regulating negotiable instruments. The act was intended to embody in a code a particular branch of the law. Where the act speaks, it controls, and

its meaning should be ascertained by interpreting the language used, and not by assuming that the former law on the subject should remain unaltered. The act defines persons who are primarily liable, and those who are secondarily liable. An accommodation maker who engages to pay the instrument according to its tenor is primarily liable. Under the head of "Discharge of Negotiable Instruments," the act provides as follows:

"Sec. 119. A negotiable instrument is discharged:

"(1) By payment in due course by or on behalf of the principal debtor.

"(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

"(3) By the intentional cancellation thereof by the holder.

"(4) By any other act which will discharge a simple contract for the payment of money.

"(5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

"Sec. 120. A person secondarily liable on the instrument is discharged:

"(1) By an act which discharges the instrument.

"(2) By the intentional cancellation of his signature by the holder.

"(3) By the discharge of a prior party.

"(4) By a valid tender of payment made by a prior party.

"(5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

"(6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved in the original instrument."

The act thus specifies how the instrument, and consequently the parties primarily liable, may be discharged, and the several ways in which persons secondarily liable may be discharged. When speaking of persons primarily liable, it contains no provision releasing them by the holder's extending the time for payment or postponing his right to enforce the instrument. When speaking of persons secondarily liable, it does provide that they may be released by such an agreement. The question of the release of a party by the extension of the time of payment being thus present in the legislative mind, it is evident that, if it was intended that a person primarily liable should be so released, it would have so provided in the act. Having covered the entire subject of discharge and release from liability, and having provided that parties secondarily liable may be released by extension of time without any such provision affecting parties primarily liable, it is reasonable to conclude that the Legislature did not intend that parties primarily liable should be so released. 3 R. C. L. 506; Union Trust Co. v. McGinty, 212 Mass. 205, 98 N. E. 679, Ann. Cas. 1913C, 525; Vanderford v. Farmers' etc., National Bank, 105 Md. 164,66 Atl. 47, 10 L. R. A. (N. S.) 129; Cellars v. Meacham, 49 Or. 186, 89 Pac. 426,

10 L. R. A. (N. S.) 133, 13 Ann. Cas. 997; Wolstenholme v. Smith, 34 Utah, 300, 97 Pac. 329; Bradley Eng.. etc., Co. v. Heyburn, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127; National Citizens' Bank v. Toplitz, 81 App. Div. 593, 81 N. Y, Supp. 422, affirmed on another ground 178 N. Y. 464, 71 N. E. 1; Richards v. Market Exchange Banking Co., 81 Ohio St. 348, 90 N. E. 1000, 26 L. R. A. (N. S.) 99; Murphy v. Panter, 62 Or. 522, 125, Pac. 292. The only court which has not followed the above rule in its entirety is the Supreme Court of Iowa, which held, in the case of Fullerton Lumber Co. v. Snouffer, 139 Iowa, 176, 117 N. W. 50, that, though the rule might be proper as between the holder in due course and an accommdoation maker, it was not proper where the instrument, though negotiable, had not been negotiated, and the question arose between the maker and the payee himself. The court based its conclusion on the idea that the entire purpose and scope of the Negotiable Instruments Act was to fix the rights of holders in due course, and make it uniform in the several states, and the mere fact that the note was negotiable did not, as between the maker and payee, deprive the former of any defense thereto that he would otherwise have. In the very recent case of Cowan v. Ramsey, 15 Ariz. 533, 140 Pac. 501, the question arose between the immediate parties to the instrument, and the court, after stating that the rule had been adopted by all the courts (mentioning them) that had had occasion to pass on the question, with the exception of the Supreme Court of Iowa in the case of the Fullerton Lumber Co. v. Snouffer, supra, said:

"In this case it was held that, as between the immediate parties to the instrument, an extension of time by the holder, without the consent of the accommodation maker, would discharge the latter, on the theory that in such case the payee was not a holder in due course. It seems to us that such a construction of the statute does not comport with either its letter or spirit, The other construction appeals to us as the correct one. Besides, it has the sanction of the great majority of the courts, and, by following it, uniformity of decision is more nearly secured and the object of the act accomplished."

Nor has this court adopted the view that the Negotiable Instruments Act applies solely to instruments that have been actually negotiated to a holder in due course. Our view on the subject is expressed in Wettlaufer v. Baxter, 137 Ky. 362, 125 S. W. 741, 26 L. R. A. (N. S.) 804 in the following language:

"In short, if a note is not a negotiable instrument within the meaning of this act, then the rights and liabilities of the parties on it are to be determined by the law as administered with reference to nonnegotiable instruments. If it is a negotiable instrument in the meaning of the act, then the rights and liabilities of the parties to it are fixed and determined by the provisions of the act alone."

We therefore conclude that, if the note itself is negotiable, the act applies whether it be actually negotiated to a holder in due course or not.

In view of the purpose of the Negotiable Instruments Act, and the

necessity for uniformity in its interpretation, we, like the Supreme Judicial Court of Massachusetts, in the case of Union Trust Co. v. McGinty, supra, would be inclined to follow the practically harmonious decisions of the courts of other states, even if we were less certain of the soundness of our own conclusion. We therefore conclude that an accommodation maker, or surety, though known to be such by the payee, is not released by an agreement between the payee and the principal obligor extending the time of payment or postponing the the payee's right to enforce the instrument, though made without the assent of the accommodation maker. This being true, it is unnecessary for us to determine whether or not the proven facts would constitute a discharge.

Judgment reversed, and cause remanded, with directions to enter judgment in favor of plaintiff.

TAXATION.

Merchants' State Bank of Velva v. McHenry County, Supreme Court of North Dakota, June 9, 1915. 153 N. W. Rep. 386.

The capital stock, surplus, reserve, undivided profits, loans, discounts, furniture, etc. of a state bank are not taxable to the bank, but to the stockholders.

Appeal from District Court, McHenry County; Burr, Judge.

Action by the Merchants' State Bank of Velva, a domestic corporation, against the County of McHenry, in the State of North Dakota, and others. From judgment for plaintiff, defendants appeal. Reversed and dismissed.

Goss, J. This is an action to enjoin collection of a tax levied against a state bank upon its shares of capital stock. Cancellation of the tax is sought. The complaint alleges: That the bank delivered to the assessor a statement verified by the cashier, showing its capital stock, surplus, reserve fund, and undivided profits "in excess of 5 per cent. of its loans and discounts," and the names and residence of its stockholders, together with the number of shares of stock owned by each shareholder. That the assessor "did assess the capital stock of said plaintiff bank in the sum of $4,806. That upon said assessment there was levied a tax against the plaintiff of $310.95, which became due and payable on December 1, 1911." "That said assessment was made contrary to law, and the tax levied thereon is void and illegal. That the plaintiff has refused and still refuses to pay said tax." That distraint of plaintiff's property is threatened. That, unless enjoyned, collection will be made to plaintiff's irreparable injury, for which there will be no adequate remedy at law. A general demurrer was inter-

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, §§ 477, 489.

posed, which was overruled, with leave given to answer. None was served, and later, on proof submitted, a judgment by default was rendered canceling the tax. Defendant appeals, assigning error upon the conclusions of law and the over-ruling of the demurrer. The State Tax Commissioner also appeared with counsel on the argument and requested that the law governing assessment of banks and bank stock be declared and settled. Questions necessarily presented are: (1) Whether a tax is valid when levied upon an assessment of bank shares in one aggregate amount and against the bank instead of upon the value of the shares and against each shareholder named as owner. (2) What is the method of assessment of bank stock, as contemplated by statute. (3) Although the tax be invalid, whether equitable relief from its collection should be awarded.

For purposes of taxation, the bank and its stockholders are separate individuals. The bank is not taxed upon its strictly bank personalty holdings. Instead the total value of its capital stock is determined and prorated, and the tax is levied against the shares in the names of the respective individual shareholders. A majority of the states proceed likewise in taxing banks. First National Bank v. Commonwealth, Ky., 76 U. S. (9 Wall.) 353, 19 L. Ed. 701, and lengthy note to 58 L. R. A. 513, and note to 45 L. R. A. 737, and 3 L. R. A. (N.S.) 584, note. Bank real estate is taxable as such, and when owned by the bank is taxed to it as owner. Likewise personally owned by a bank and not properly a part of its banking assets and banking business is taxable to it as owner. But its capital, surplus, reserve, undivided profits, loans and discounts, banking furniture and fixtures not real estate, and all such strictly banking utilities and banking agencies are taxable as the personal property not of and to the bank, but of and to the shareholders and determined and apportioned upon a par share valuation.

The authorization of and chartering of national banks involves federal finance, an instrument of federal government, and is a matter solely within congressional control. As the right to tax necessarily carries with it the power to destroy, it has always been held that the states do not possess the power to directly or indirectly tax national banks, their business or franchises. McCullough v. Md., 4 Wheat. 316, 4 L. Ed. 579: Bank v. Kentucky, 76 U. S. (9 Wall.) 353, 19 L. Ed. 701. The National Banking Act, however, permits the states to tax shareholders upon the value of national bank shares owned by them under restrictions guaranteeing them against excessive, unfair and unjust taxation. Thus the provisions of section 2115, C. L. 1913, authorizing taxing of shareholders upon the value of shares owned by them instead of taxing the bank in solido, purposely draws a distinction between the bank and its shares and its shareholders. For taxation purposes, shareholders in state and national banks are on an identical basis. See notes to 3 L. R. A. (N. S.) 584, 45 L. R. A. 737, and to 58 L. R. A. 513. The distinction between the bank and sharehold-

ers is well drawn in the Appeal of First National Bank of Hillsboro 25 N. D. 635, at page 640, 146 N. W. 1064, at page 1066, as follows:

"It proceeds upon the theory that the bank and its shareholders are one. * * The shareholders pay no tax upon the real estate. That is the property of the bank. The shareholders and the bank are as distinct for purposes of taxation as separate individuals."

Assuming that these bank shares represent property of an assessable value for taxation purposes, the assessment and tax attempted to be levied thereon in solido against the bank violates both the letter and spirit of our taxing laws. Section 2115, C. L. 1913. The assessment and the tax levied thereon should have been against the shareholders for and upon the value of their respective shares. The banks as an entity is not subject to taxation for the value of its capital stock represented by shares. The alleged tax is void in law. Nat. Bank v. Hoffmann, 93 Iowa, 119. 61 N. W. 419, and Kimball v. National Bank, 1 Ill. App. 209, both on all fours with this case.

But invalidity alone is insufficient to warrant equitable relief from collection of the alleged tax. See authorities collated in Bismark Water Supply Co. v. Barnes, 153 N. W. 454 (not yet officially published). Besides establishing the tax to be void, plaintiff must bring itself within some generally recognized head of equitable jurisdiction to entitle it to equitable relief. It has recognized this necessity and urges that relief should be granted to avoid its irreparable injury, to prevent a multiplicity of suits being brought against it by its shareholders, and that it has no adequate legal remedy should relief be denied. No irreparable injury can result from enforced collection of this void tax. It has an adequate remedy at law to recover any illegal tax, paid under and because of actual distraint. St. A. & D. Elev. Co. v. Bottineau County, 9 N. D. 346, 83 N. W. 212, 50 L. R. A. 262, and Bismark Water Supply Co. v. Barnes, supra.

There can be no multiplicity of suits against plaintiff by its stockholders to recover of it because of any void tax so paid. Railway Co. v. Dickey County, 11 N. D. 107, 111, 90 N. W. 260. Relief in equity has been denied stockholders seeking to defeat collection of a tax when levied against the bank in solido instead of against individual stockholders. First Nat. Bank of Aberdeen v. Chehalis County, 6 Wash. 64, 32 Pac. 1051, affirmed 166 U. S. 440, 17 Sup. Ct. 629, 41 L. Ed. 1069; Bank v. City of Newark, 39 N. J. Law, 380; Castles v. City of New Orleans, 46 La. Ann. 542, 15 South. 199. But it must not be assumed that, if the bank pays this tax it is subject to an action at law by its stockholders to recover such payment. There is no such resulting liability. Stockholders have no direct pecuniary interest in the nonpayment of this void tax different from a stockholder's interest in any unwarranted or extravagant expense or disbursement made by a corporation. Because the bank may waste its funds does not entitle its stockholders to compel a further waste by distribution to them of its assets

while it is an existing and going business concern. While a bank is a trustee of its funds for its stockholders, they individually have no interest cognizable in law in the nonpayment of this void tax. Under certain circumstances equity would intervene on their petition as against the taxing power or against the bank's officers, as illustrated by Cummings v. National Bank, 101 U. S. 153, 25 L. Ed. 903, and Dodge v. Woolsey, 59 U. S. (18 How.) 331, 15 L. Ed. 401, but not as against the bank unless by an action in the nature of an accounting. If this void tax be paid, the stockholders have no right by an action at law to further mulct it in damages, because of such disbursement. There is no basis upon which to predicate a claim that a liability to a multiplicity of suits exists. There is no ground for equitable interference. As this tax is void, the county will be responsible in damages for its enforced collection. Equity will leave the plaintiff to pursue such fully adequate legal remedy. It will not be assumed, however, that the county will persist in enforcing collection of this illegal tax in the face of this adjudication of its invalidity. No other questions are presented necessary to decision.

The judgment appealed from is ordered set aside, and a judgment of dismissal directed to be entered.

CHRISTIANSON, J., did not participate; BUTTZ, District Judge, sitting in his stead.

SPECIAL DEPOSIT BEFORE BANKRUPTCY.

Gill v. Farmers' & Manufacturers' Bank, Kansas City (Mo.) Court of Appeals, April 5, 1915 176 S.W. Rep. 1111.

A special deposit in a bank, to be paid pro rata to the depositor's creditors, made a few days before the institution of bankruptcy proceedings against the depositor is void as against the trustee in bankruptcy.

Error to Circuit Court, Bates County; C. A. Calvire, Judge.

Action by Charles S. Gill against the Farmers' & Manufacturers' Bank. Judgment for defendant and plaintiff brings error. Reversed and remanded.

ELLISON, P. J. This action arises on a petition to which a demurur was sustained on the ground that it did not state facts sufficient to constitute a cause of action. The following facts appear from the petition: Susan L. Ames was indebted to a number of creditors, the defendant bank being one of them. She owned a stock of merchandise and sold it for $3,424.60. This sum constituted all of her assets, and, on the 20th of April, 1910, she deposited it with the defendant bank as a special deposit, to be distributed by the bank pro rata among all of

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § 60.

her creditors, and that defendant accepted the deposit for such purpose and no other, but that defendant denies that it received the money as a *special* deposit to be distributed pro rata among her creditors, and has attempted to apply a greater part of it in liquidation of its own claim. That on the 23d day of April, three days after the deposit, a part of her creditors filed an involuntary petition in bankruptcy against her, and that she was adjudged a bankrupt on the 7th day of July following, the plaintiff was then elected and qualified as trustee in bankruptcy of her estate. That on the filing of the petition in bankruptcy, the referee issued an order to defendant, restraining it from disposing of any part of said deposit. That thereupon plaintiff applied for an order, requiring defendant to pay over to him as trustee in bankruptcy the sum so deposited with it by Susan L. Ames. Defendant was ordered to appear before the referee and show cause. It did appear and—

"filed a plea to the jurisdiction of the court and denied its right to issue the order on the ground that it held said sum of money as an adverse claimant."

The petition further alleges that the proceeding was taken to the United States Circuit Court of appeals. It is then alleged that that court in delivering its opinion (In re Gill, 199, Fed. 726, 111 C. C. A. 454) stated:

"The litigation over the validity of the plea to the jurisdiction in this case has occupied so much time, and the probability that the bank's claim is colorable is so slight, that it seems to us that the better course for the officers below to pursue in this case is to dismiss the petition of the trustee for the order to pay over the money and to let the parties litigate their controvery in a plenary suit."

To that end the court ordered a dismissal of plaintiff's application for an order requiring defendant to pay to him said deposit, on the ground that it ought not to be tried summarily. This action followed.

We are of the opinion that the law of the case is with the plaintiff, and that the demurer to his petition should have been overrulled. The facts stated, when reduced to their real meaning, are that, only three days before the institution of proceedings in bankruptcy, the bankrupt handed over all her assets to defendant as one of her creditors, with directions to pay them, including itself, their pro rata share of the amount, and that defendant accepted the trust. This was, in substance and affect, an assignment for the benefit of creditors, within the meaning of the bankruptcy act. A general assignment is an act "by which the parties intend to make an absolute and unconditional appropriation of the property conveyed to raise funds to pay the debts of the vendor," and "such a conveyance *inevitably thwarts the operation of the bankruptcy act.*" In re Thomlinson Co., 154 Fed. 834, 83 C. C. A. 520. (Italics ours) "It is," says the court in that case, "obnoxious to the provisions of the Bankruptcy Act, which confers the right of administering an in-

solvent debtor's estate upon a trustee to be chosen by and in the interest of the creditors, and constitutes an act of bankruptcy."

An assignment for the benefit of creditors is itself an act of bankruptcy, without regard to whether actual fraud was intended by the debtor, or whether he is solvent or insolvent. West Co. v. Lea, 174 U. S. 590, 19 Sup. Ct. 836, 43 L. Ed. 1098. It is said in Randolph v. Scruggs, 190 U. S. 533, 536, 23 Sup. Ct. 710, 711, 47 L. Ed. 1165, that it could not be denied that:

"A general assignment for the benefit of creditors, made within four months from the filing of a petition in bankruptcy, is void as against the trustee in bankruptcy, so far as it interfers with his administering the property assigned."

It is manifest that to sustain the position taken by the defendant, we would put it in the power of a bankrupt to transfer administration of his estate from the bankruptcy court to some person of his own choosing. This bankrupt's assets within four months (within three days in fact) of the bankruptcy was specially deposited with defendant (that is, transferred to defendant), to be used in paying all creditors pro rata. It is common for a supposed debtor to dispute owing one claiming to be a creditor, or, if admitting a debt, dispute the amount of it. So creditors often do not agree among themselves. Some claim preferences, liens, or other equities. Selfish claims, or honest mistakes, make their appearances. Who is to settle these conflicts? Congress, under its power to enact laws in bankruptcy, has placed that jurisdiction in the federal courts. If the bankruptcy may also select the tribunal, then we have the anomaly of two jurisdiction administering the same estate.

The judgment is reversed, and the cause remanded, All concur.

LIABILITY OF ACCOMMODATION MAKER.

Hodgins v. Northwestern Finance Co., Supreme Court of Oklahoma, April 27, 1915. 148 Pac. Rep. 717.

The accommodation maker of a note is liable to a holder in due course, although the principal maker is not liable because of the fact that he is a minor.

Commissions' Opinion, Division No. 2. Error from County Court, Oklahoma County; John W. Hayson, Judge.

Action by the Northwestern Finance Company against Eugene E. Hodgins and another. Judgment for plaintiff against defendant P. J. Hodgins, and he brings error. Affirmed.

GALBRAITH, C. This action is based upon a promissory note, reading:

"$50.00. Oklahoma City, Okla., Jan. 18, 1910.

"For value received we promise to pay to the order of James J.

NOTE.—For other similar decisions see Banking Law Journal Digest, § 20.

Craig & Company, the fiscal agents of the Lincoln-Jefferson University, the sum of fifty dollars ($50.00) in monthly installments of ten dollars ($10.00) each, on the first day of each and every month, beginning March 1, 1910, until paid, with interest after maturity at the rate of 6% per annum, until paid, payable at 115 Temple Court, Mpls. Minn.

"Eugene E. Hodgins.
"P. J. Hodgins."

"Indorsed on the back thereof:

"Pay to the order of Northwestern Finance Company.

"James J. Craig & Company,
"By James J. Craig."

The plaintiff alleged that it was the owner and holder of the note, and that it acquired the same prior to maturity and in due course. There was a trial to the court and a judgment rendered against P. J. Hodgins for the amount of the note and interest. From this judgment an appeal has been perfected to this court.

The defense set up was that the contract, in settlement of which the note had been executed, had been rescinded, and that it had been secured by fraud, and a failure of consideration, and the minority of Eugene E. Hodgins, and that P. J. Hodgins was a surety on the note, and it was contended that the release of E. E. Hodgins on account of his minority released the surety also.

Two assignments of error are argued in the brief: (1) That the judgment of the court below is contrary to the law and the evidence; and (2) that the court erred in overruling the motion for a new trial. The evidence of the plaintiff that it acquired the note in suit prior to maturity and for value and in due course is not controverted. Under the law, the defenses attempted to be made by the plaintiff in error were not available to him. Upon the face of the note the plaintiff in error appeared to be a joint maker; and even if he signed the note, as he testified, as an accommodation to his brother his contentions as a defense to the action could not be sustained.

Section 4079, Rev. L. 1910, reads:

"An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."

The statute (section 4102, Rev. L. 1910) defines a holder in due course as follows:

"A holder in due course is a holder who has taken the instrument under the following conditions:

"First. That it is complete and regular upon its face;

"Second. That he becomes the holder of it before it was overdue,

and without notice that it had been previously dishonored, if such was the fact; * *

"Fourth. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

The evidence on behalf of the defendant in error clearly brings it within the definition of a holder in due course, as prescribed in this statute.

The rights of a holder in due course are defined in section 4107, Rev. L. 1910, as follows:

"A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon."

The contention of the plaintiff in error that he was merely a surety on the note is answered by the court in referring to a similar contention made in the case of Stovall et al. v. Adair et al. 9 Okl. 620, at page 625, 60 Pac. 282, at page 283:

"We think there can be no question, under the proof. * * that Mrs. Adair appears to be a joint maker and principal on the notes; that the payees had no notice or knowledge that she was a surety, and acted upon the faith of her appearance as a principal; and that she cannot, as against them, be heard to say that she signed the note as surety."

The payee of a note might have known, at the time the same was executed, that E. E. Hodgins was a minor, and might, for that reason, have insisted on P. J. Hodgins signing the note as he did. The latter cannot be heard to contend that he is released from liability on the note by the finding that the other joint maker is released on account of minority.

The finding of the trial court that E. E. Hodgins was a minor, and the judgment in his favor on that account, cannot release P. J. Hodgins from liability on said note in the hands of an innocent purchaser prior to maturity and in the due course of business.

We recommend that the exceptions be overruled. and the judgment appealed from be affirmed.

PER CURIAM. Adopted in whole.

Modern Banking and Trust Company Methods

BY

WILLIAM McCHESNEY MARTIN, A. B., LL. B.

CHAPTER XVI.

The Bank's Records (Continued).

THE OVERDRAFT BOOK.

A bank sometimes pays a check of a depositor when he has not a sufficient sum to his credit to cover it. The amount by which the the check exceeds his balance is known as an overdraft. It is nothing more than an unauthorized loan, usually unsecured, and, as a rule, should not be allowed. The practice is neither sanctioned by the Comptroller of the Currency, nor by the State Banking Departments. However, under certain conditions, the granting of an overdraft seems to be unavoidable. If the customer is a good one and has excellent credit, it does not seem exactly right to refuse to pay his check on account of insufficient funds, especially if the amount is small. Still, the cashier, for he is usually the one who has to take the responsibility does not care to have the unauthorized loan on his books. The chances are he pays the check and then tries to reach the depositor, so as to get him to make a deposit to cover the amount of the overdraft.

As soon as an overdraft is detected, it should be promptly called to the attention of the cashier of the bank, to ascertain whether or not it is to be allowed. If he refuses to honor the cheek, it is returned to the person or bank presenting it, If the overdraft is allowed, the the depositor should be immediately notified, and this is usually done by use of the telephone, when possible. If he cannot be reached by telephone, a printed notice should be mailed to him, advising him of the amount of the overdraft and requesting him to make a deposit and leave his pass book to be balanced, so errors, if any, may be corrected.

When an overdraft is allowed, the bank should see that it is promply paid or that the customer executes his note for the loan. The officers of the bank should closely watch the overdrafts to see that this is done. For this purpose the overdrafts are usually entered each day in a book called the Overdraft Book, and this record is daily scrutinized by the officers of the bank. This book generally contains such information as the date of the overdraft, the name of the depositor, the amount, and the name of the officer who granted the overdraft, or the clerk who allowed it.

LOSSES FROM OVERDRAFTS.

The following letter, which was sent by the Comptroller of theCurrency to the national banks of the country, shows his attitude towards

overdrafts and the enormous losses which have resulted by allowing them.

"This office acknowledges with appreciation the efforts which the national banks generally, throughout the country, have made in co-operating to eliminate the overdraft evil.

"The reports of condition submitted by the national banks as of May 1, 1915, show that, as a result of the efforts in this connection of the national banks and of their customers and of this office, the total amount of overdrafts in all national banks, which on February 4, 1913, amounted to $22,307,066 (or $2.67 per $1,000 of total deposits) had been reduced on June 30, 1914, to $15,485,641, and as a result of the special efforts put forth since that time, the total amount of the overdrafts in the 7,604 national banks of the United States had been reduced on May 1, 1915, to $5,904,374, or 66 cents per $1,000 of total deposits.

"The national banks of the country report that the aggregate amount of losses which they charged off during the calendar years 1912, 1913 and 1914, on account of overdrafts was $1,209,334, of which $80,223 was in the New England States, $285,617 in the Eastern States, $252,-994 in the Southern States, $216,704 in the Middle States, $213,807 in the Western States and $159,989 in the Pacific States.

"It is hoped that efforts to eliminate overdrafts entirely will be continued and that they may before long disappear entirely from bank statements."

DECISIONS REGARDING OVERDRAFTS.

In this connection, it is well for us to know how the question of overdrafts has been treated by the courts.

In Bacon v. United States (97 Fed. 35), in defining an overdraft, it was stated: "An overdraft arises when a customer of a bank draws from that bank more money than is standing to his credit in his account with the bank. Such a sum so appearing from a depositor's account to be overdrawn is an overdraft, and should be reported as such in reports made to the Comptroller of the Currency although arranged for or covered by a note in the hands of the bank, called an 'overdraft note.' This is the ordinary meaning of the word 'overdraft,' as used among bankers; and it must be presumed, therefore, that when the Comptroller of the Currency calls upon a national bank for report of its condition, and asks for a statement of the amount of overdrafts, secured and unsecured, he uses the word in the sense last mentioned, and desires a statement of the total amount which customers of the bank have drawn in excess of the sums that have been placed to their credit on the books of the bank."

As early as 1828, in the case of Minor v. Mechanics Bank of Alexandria (1 Pet. 46), the United States Court held that not only were a cashier and his bondsmen liable on overdrafts allowed by him, but, also, that the Board of Directors had no authority to allow him to per-

mit overdrafts. The Court said: "The question then comes to this—whether any act or vote of the Board of Directors, in violation of their own duties, and in fraud of the rights and interest of the stockholders of the bank, could amount to a justification of the cashier, who was a *particeps criminis*. * * * It supposes that the usage and practice of the cashier, under the sanction of the Board, would justify a known misapplication of the funds of the bank. What is that usage and practice, as put in the case? It is a usage to allow customers to overdraw —and to have their checks and notes charged up, without present funds in the bank, stripped of all technical disguise—the usage and practice, thus attempted to be sanctioned is a usage and practice to misapply the funds of the bank; and to connive at the withdrawal of the same, without any security, in favor of certain privileged persons. Such a usage and practice is surely a manifest departure from the duty, both of the directors and the cashier, as cannot receive any countenance in a court of justice. It could not be supported by any vote of the directors, however formal; and, therefore, whenever done by the cashier, is at his own peril, and upon the responsibility of himself and his sureties. It is anything but 'well and truly executing his duties, as cashier.'"

In this same case, the words "well and truly to execute the duties of the office," as used in a cashier's bond, were construed as follows: "'Well and truly to execute the duties of the office' includes not only honesty, but reasonable skill and diligence. If the duties are performed negligently and unskillfully—if they are violated, from want of capacity or want of care, they can never be said to be 'well and truly executed.' The operations of a bank require diligence, with fitness and capacity, as well as honesty, in its cashier; and the security for the faithful discharge of his duties would be utterly illusory, if we were to narrow down its import to a guarantee against personal fraud only."

In 1771, in the case of Union Savings Bank v. its teller and secretary, pro tem., Edwards, and his bondsmen (47 Mo. 445), the Supreme Court of Missouri did not follow this decision, but approved the instruction of the Circuit Court, to the effect that overdrafts could be authorized by the Board of Directors, either by resolution or by knowingly allowing the practice. In this case, Edwards had allowed an overdraft of $17,325.14 to a depositor named Brentano. It was held that the teller was personally liable and judgment was entered against him and his bondsmen. However, the very size of this overdraft indicated fraud, and in fact it developed that the teller and the depositor were both interested in the transaction. It was a method for the teller to misappropriate the bank's funds under color of attending to his daily business. The question decided was one of fraud, rather than overdraft. In the course of the decision, the following instruction, given by the Circuit Court, was discussed, and emphatically

approved by the Supreme Court of Missouri: "5. If the jury believe from the evidence that plaintiff had for a long time previous to the defalcation charged in plaintiff's petition, authorized defendant Edwards, as an officer of plaintiff to permit customers and depositors to overdraw their deposit, either by direct authority or sanctioning or approving such overdrafts, and that the defalcation charged was an ordinary overdraft by a customer of said association, in accordance with the custom established by plaintiff and within the discretion confided to said Edwards, then plaintiff cannot recover in this action."

However, five years later, in 1876, in the case of the Market Street Bank v. Wm. A. Stumpe, et al, (2 Mo. App. 545), it was held that the directors of a bank have no power to allow overdrafts, and that the fact that they sanction them does not relieve the cashier or his sureties. Stumpe, the cashier, allowed an overdraft amounting to $7,000, and the bank recovered judgment against him and his bondsmen. The decision reads: "The fact—and it appears to be a fact—that the Board of Directors, or some of them, knew that from time to time one or another depositor was allowed to overdraw his account, is by no means a justification of the act of the teller in allowing a man, whom he must have suspected to be in straightened circumstances, to overdraw his account nearly $7,000. It is held that directors of a bank have no power to allow overdrafts, and the fact that they sanction them does not relieve the cashier or his sureties. The rule is a most wholesome one; it is well supported by authority, and, so far as we know, has not been departed from in this state." In this case, the instruction discussed in Union Savings Bank v. Edwards, et al, was spoken of and disapproved, and the holding of the United States Court in Minor v. Mechanics Bank of Alexandria followed. This decision has never been reversed in Missouri, and is still the decided law in that state.

However, even in this case the question of fraud entered, or at least the cashier was negligent when he allowed so large an overdraft. In most of the cases that have been decided the cashier, in allowing an overdraft, has been under the suspicion at least of acting for his personal interest rather than for the interest of his bank.

In New York a case did arise where no such suspicion could possibly exist. The Commercial Bank of Albany, in 1872, tried to hold its cashier, Visscher Ten Eyck (48 N. Y. 305), among other things, personally liable for an overdraft. In the course of its decision the court said: "I do not, however, assent to the claim of the counsel of the appellant, that a cashier, in all cases, becomes personally liable when he permits an overdraft. It is not an uncommon thing for bankers to permit overdrafts, with the understanding that the account should be made good before the close of banking hours on that day or soon after; and whether such overdrafts are prudent or not depends upon the char-

acter and standing of the drawer, and upon the circumstances of each case."

This is the New York rule, and, taking into consideration the usages and customs of modern business, is based on common sense. The trend of modern decisions is to support it. Cyc sums up the situation by saying: "In paying overdrafts, the modern rule is different from the old one. Once to do this was a grave offense; now its propriety depends on the ability and worthiness of the depositor. It may intentionally be done as a loan and, under proper conditions, is fully justified."

In view of the fact, as shown in the cases cited, that through overdrafts an officer might be tempted to do wrong, acting in collusion with a depositor, the law, as stated in Minor v. Mechanics Bank of Alexandria' is not a bad one. As the officer is personally responsible, he will be careful not to permft an overdraft of any large amount, and he will be sure to see that it is paid. It is of practical aid to the banker, too, for it puts him in position to explain to the depositor when he has refused an overdraft, "Don't blame me or the bank. The law does not allow overdrafts. I am sorry."

Nevertheless, if at any time, an attempt should be made to hold a cashier personally liable for an overdraft and he were able to show to the court that at all times he was acting for the best interests of his institution and in accordance with an established usage, it would seem that a court might easily find as the New York court did under similar circumstances.

(*To be Continued.*)

LIQUID CHICAGO BANK ASSETS.

George M. Reynolds, President of the Continental & Commercial Bank of Chicago, recently analyzed the banking conditions of his city and found gratifying evidence of stability and fortification against adverse conditions. He pointed out that the banks had to contend with the general decrease in volume of business and had stood the depression remarkably well. Cheap rates and a plethora of money automatically hurt their earning power but readjustment to new conditions, with conservatism in not taking too many obligations of the warring nations, had enabled them to build up reserves and weather the storm in splendid shape. He paid a special tribute to the liquidity and ability of the surburban banks as most strongly fortified against financial distress and indicating conservative management.

CONNECTICUT BANKERS WANT NEW YORK MEMBERSHIP.

Fifty-two Connecticut banks with a total capital and surplus of $24,161,000 and deposits of $67,669,879, have petitioned for transfer of membership from the Boston to the New York Federal Reserve Bank. The petitioners are all located west of the Connecticut River and have social, financial and commercial relations almost wholly with New York. It is reported that of the checks these banks receive on deposit from 75 to 90 per cent. are drawn on New York banks.

A. B. A. CONVENTION.

SEATTLE.

The bankers of Seattle have arranged an entertainment for the visiting delegates and guests that is in keeping with the precedents set in the past few years by other cities where the conventions have been held.

In this work the bankers have had the co-operation of the city authorities, business men in general and the various representative clubs and organizations; so that all who may have the good fortune to attend the convention this year will meet with as hearty welcome as was ever extended to the members of the American Bankers Association.

Seattle is located in the "Wonderland of the Northwest," and for this reason there are unusual facilities for carrying out entertainment features.

To those who have never visited this wonderful section of our great country, what they see and learn of natures bounteous treatment, and its marvelous development, will be a true revelation; and yet this section is but in its infancy. Its advantages are so numerous that a stranger does not have to be a very great student of nature to quickly observe them. It is for this reason a wonderful development has taken place within the past few years.

Space does not permit of us setting forth in detail the many advantages and opportunities that are waiting now with open arms in Seattle and surrounding country for enterprising ambitious people. Natures endowments are so numerous, that all temperaments and dispositions of mankind can be suited.

Fortunately, the pioneers and early settlers were full of energy and progressive spirit, which was greatly augmented by climatic and topagraphical conditions; the result of which was that a splendid foundation was laid for an empire of wealth, health and prosperity.

Every honest toiler and every legitimate investor are made to know that they will share in the prosperity they help to build up.

SEATTLE'S GROWTH.

We would not do justice to the metropolis of this great "Wonderland" if we did not give a few facts and figures regarding her commercial, industrial and financial growth within the past fifteen years. In 1900 Seattle's population was 81,000. In July 1915, it was 331,000. Bank clearings in 1900 were $130,000,000, 1914 $633,000,000, Capital, Surplus and profits in 1903, were $3,490,000, in 1914 $11,500,000, Deposits in 1903, $17,400,000, in 1914, $82,200,000. Building permits in 1900, $3,263,000 in 1914 $12,665,000.

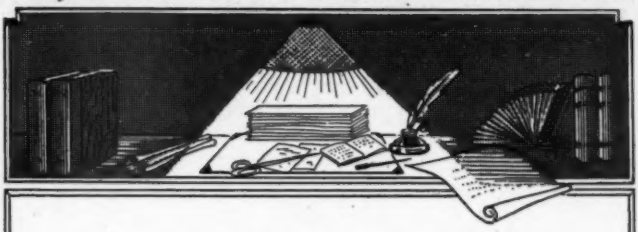
The Publicity Committee have issued a booklet that will serve as a guide to visitors. It contains a map of the city, and a map of the sound and surrounding country. It gives all places of interest with index figures and letters showing their location on the map of the city, and other facts about the city and its environments.

The entertainment programme is elaborate and cannot fail to illustrate the generous hospitality of the bankers of Seattle and Washington. All visitors will receive a cordial welcome.

THE BROADWAY TRUST COMPANY OF NEW YORK.

The Broadway Trust Company, of New York, has issued a booklet on "Tax-Free Securities" under the New York Secured Debts Tax Law, as amended by the last Legislature. Under the law as amended all persons owning certain bonds and similar obligations, can pay to the N. Y. State Comptroller before November 1, 1915, a registration tax thereon of 3-4 of 1% on the face value thereof. By so doing, such securities shall be free from all taxation, state, city or local, for the period of five years from the payment of the tax. Full particulars how to secure such exemption are given in this booklet which will be sent to any address by applying to the Broadway Trust Co., Woolworth Building, New York.

INQUIRIES AND CORRESPONDENCE



This department places at your service able legal talent and experts on banking and financial matters. Inquiries from our subscribers are answered free. Name and address is published unless otherwise requested.

CONDUCTED BY JOHN EDSON BRADY OF THE NEW YORK BAR.

CAUTION.

In submitting a question it is essential that all of the facts involved be clearly set forth. If the question relates to a check, bill of exchange, note, or other negotiable instrument, or to any paper or document, a copy should be sent, also copies of letters having reference to the transaction out of which the question arises.

USE OF WORD "SAVINGS" IN BANK ADVERTISEMENT.

Editor Banking Law Journal. BELMONT, N. Y., July 24, 1915.

DEAR SIR:—There appears to be a law in New York state that no banks except savings banks can use the word "Savings" in any of its literature. We are enclosing herewith a Thrift article, and you will notice in the last paragraph it states "Make each year a better saving year than the one before."

This article does not solicit savings accounts, it is merely an article on Thrift and we would like to have your opinion if this article put out by bankers in New York State would conflict with the law.

Thanking you, we are, very truly yours, INQUIRER.

THRIFT

"We can't all of us have great riches. Few of us care to pay the price of great riches. But we CAN all of us be wealthy in our possessions, happy in our contentment, and prosperous before the world.

"Abraham Lincoln once wrote to a friend, describing the circumstances of a man who spent beyond his means:

"Dear Sir:—Yours of the 10th received. I am well acquainted with the gentleman named and know his circumstances. First of all he has a wife and baby. Together they ought to be worth $50,000 to any man. Then he has an office in which there is a table worth about $1.50 and three chairs worth say $1.00. Last of all, there is in one corner, a rathole which will bear looking into."

"In the midst of poverty, here was a wealthy man, lacking thrift.

There will always be the rich because there will always be those who strive for riches. There will always be the poor because there will always be those who by reckless spending invite poverty. But there are those who have learned the principles of thrift and economy and who, while not striving for riches, have found that the great jewel HAPPINESS, can be best kept where best protected,

and who have discovered that thrift sometimes means as Poor Richard says, that "It is better to spare and have, than spend and crave."

"While money alone does not bring happiness, the satisfaction of owning a Bank account secure against the rainy days, helps to smooth many a difficulty.

"Cultivate thrift—save carefully, save regularly, save continually. Make each year a better saving year than the one before. It will help you along the broad road."

Answer:—The New York statute, prohibiting the use of the word "savings" by banks other than savings banks, is subdivision 1 of section 269 of the New York Banking Law, which went into effect in April, 1914. It reads as follows: "No bank, national banking association, trust company, individual, partnership, unincorporated association or corporation other than a savings bank or savings and loan association shall make use of the word 'saving' or 'savings,' or its equivalent, in its banking business, or advertise or put forth any advertising literature or sign containing the word 'saving' or 'savings' or its equivalent, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank. Any bank, national banking association, trust company, individual, partnership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense the sum of $100 for every day such offense shall be continued."

The principal object of this statutory provision appears to be the prevention of soliciting savings accounts by banks other than savings banks. Its apparent aim is to prohibit persons and corporations, other than savings banks, from representing, directly or indirectly, to the public that they are prepared to exercise any of the functions of a savings bank, or from in any way competing with savings banks. It would be a simple matter for any bank, by using the word "savings" in its advertising literature, to create in the mind of the careless or ignorant an impression that the bank was a savings bank, organized and operated under the laws applicable to such institutions. If a state bank should erect a sign, bearing the inscription, "Open a savings account with us to-day," the same would undoubtedly constitute a flagrant violation of the spirit of section 279.

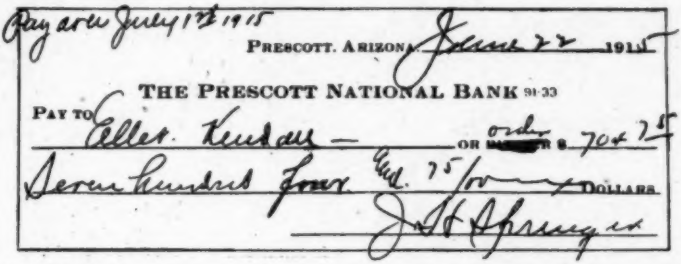
In our opinion the article printed above does not contain any representations, which would constitute a violation of the spirit and actual meaning of this section of the Banking Law. However, the language of the statute is very broad and it prohibits the use of the word "savings" in any advertisement, issued by a person or corporation other than a savings bank. And since the above article on thrift is an advertisement and contains the word "savings" it would, if issued by a bank other than a savings bank, come within the strict letter of the statute. Therefore, any state or national banker, who contemplates the use of this or similar advertisements, should, for his own protection and security, submit a copy of it before hand tohis attorney to the State Banking Department. We do not mean to say that

the Department will pass on such matters, but such action would at least indicate good faith on the part of the party who proposes to use the advertisement.

PAYMENT OF POST DATED CHECK.

Editor Banking Law Journal. PRESCOTT, Ariz., July 13, 1915.

DEAR SIR:—I enclose herewith facsimile of check received by us in a letter from the First National, Kansas City, on June 29, and was protested by us for payment on that date through the clearing house, and payment was refused on account of the notation in the left-hand corner, "*Payable July 1st.*" The question arose among the employees of this bank, did the Prescott National Bank do right in refusing payment of this check?


Pay as of July 1st 1915
PRESCOTT, ARIZONA June 22 1915
THE PRESCOTT NATIONAL BANK 91-33
PAY TO Ellen Kendall — OR ORDER $ 70.75
Seven Hundred Forty and 75/100 DOLLARS
J. H. Hargrave

Indorsements:

Pay 1st Nat. Bk. K. C. Mo.
Ellen Kendall

Pay any Bank or Banker. All prior indorsements guaranteed.
For collection.
1st Nat. K. C. Mo.
Ass't Cashier.
June 26-1915
20-6661

Does the writing in this check change it from demand paper to time paper?

Does the date in the date line or the date written to the left control?

And should we have not presented this check upon date of receipt, and any complications have arisen in the meantime would the Bank of Arizona have been held responsible?

Should this check come to us as a cash item subject to protest, could we have protested same, and who would have been liable?

Could this check have been protested under any conditions on June 29th, and contend that it ceased to be demand paper when this notation was written in the corner?

Thaking you for reply I remain, Yours truly, C. F. HOGSETT.

Answer:—The check above set forth is, to all intents and purposes, a post dated check, and could not properly be presented for payment

by the holder, or paid by the drawee until July 1st, 1915. Ordinarily the date written on a check indicates the day on which it was drawn and it is payable immediately. Frequently a check is post dated and there is nothing on the check to indicate the day on which it was drawn. Such a check is not payable until the arrival of the day of its date. The above check is nothing more than a post dated check, to which is added the feature of indicating the date on which it is signed. There is no discrepancy or conflict between the two dates on the check. As stated the date written on the date line indicates the time of drawing the check, while the date in the margin indicates the day on which the check is to be paid. There is a rule to the effect that banks are not bound to take notice of memoranda written in the margin of a check, but this applies to memoranda inserted for the benefit of the drawer, such as a notation showing what the check was given for. On the check here submitted the memorandum is an express instruction to the bank not to pay it until July 1st, which the bank would ignore at its peril. In short this check could not be presented, paid or protested, with any legal effect, until July 1st.

INDORSEMENT IN FORM OF GUARANTY.

Editor Banking Law Journal. WHITE BIRD, Idaho, July 20, 1915.

DEAR SIR:—Will you kindly advise us if an endorsement of a note by the payee thus:

"For value received ——— hereby guarantee the payment of the within note at maturity, or at any time thereafter, with interest at the rate of ——— per cent. per annum, until paid, waiving demand, notice of non-payment and protest. John Doe."

constitutes sufficient endorsement for conveying title, or whether such an endorsement by the payee would be upheld by the courts as a guarantee only, and not conveying title.

What we wish to know is, that after payee subscribes to above guarantee, if he should be required to endorse again separate and apart from the guarantee, in order to make sufficient endorsement for conveying title.

Your prompt answer will be appreciated. Yours truly, CASHIER.

Answer:—By the weight of authority a contract of guaranty, written on the back of a negotiable instrument and signed by the payee, subjects the signer to the liabilities of an indorser, and imposes upon him the burdens which the law places upon guarantors; the authorities further hold that the transferee gets good title to the instrument and becomes vested with the rights of an indorsee. The decisions referred to below, and the quoted parts taken from the opinions of some of the cases will show the conclusion which most of the courts have reached on this question and the reasoning which led to the conclusion. While we do not find that the courts of Idaho have passed on this question it is no more than fair to assume that, if the question were presented, the courts of that state would follow the rule laid down by the majority of the states. In the editor-

ial columns of this issue is published a reference to this class of indorsements in which it is suggested that banks avoid contracts of guaranty on commercial paper, so far as possible, and adopt in their stead the ordinary indorsements, coupled with a waiver of presentment, protest and notice of dishonor.

In Mullen v. Jones, 112 N. W. 1048, a Minnesota decision, the note in suit was indorsed on the back by the payee, Jones, in the following manner: "Pay C. J. Mullen, or order. I guaranty the payment of the within note at maturity, and hereby waive notice of nonpayment and demand. Andy Jones." One of the contentions of Jones, upon being sued on the note was that the writing on the back of the note was intended to be a guaranty, and not an indorsement, and that it was void because it failed to express a consideration as required by the statute of frauds. This contention the court answered as follows: "In holding that the present indorsement was an indorsement in the commercial sense, and that the transferee was an indorsee under the law merchant, this court is in accord with the best current opinion."

German American Savings Bank v. Hanna, 124 Ia. 374, 100 N. W. Rep. 357. In September, 1889, M. L. Wherry executed a note for the sum of $2,500, payable to the order of her father, John Hanna. She took the note to him and he indorsed it "Payment guaranteed." The decision does not state the exact form of the indorsement but, presumably, the indorser wrote the words "Payment guaranteed" on the back of the note and signed his name below. The note was then transferred for value and was filed as a claim against the estate of John Hanna upon his death. It was held that the note was properly allowed as a claim against the estate and that the liability of John Hanna was that of an indorser, enlarged by the obligations of an indorser.

In Robinson v. Lair, 31 Ia. 10, the defendant executed a note to Warder, Mitchell & Co., which the payee indorsed under the following guaranty: "For value received we hereby guarantee payment of the within note, and waive demand and notice of non-payment thereof." The note was then delivered to the plaintiff. It was contended that the writing on the back of the note did not convey the title of the note to the plaintiff, because it was not an indorsement of the note. In disposing of this contention the court said: "We confess ourselves unable to give effect to the contract of guaranty of payment and waiver of demand on notice, if the payee still intended to retain title. The writing simply constitutes an indorsement with an enlarged liability."

The notes involved in the case of Dunham v. Peterson, 5 N. D. 414, 67 N. W. Rep. 293, were executed by the defendants and delivered to the payee, A. H. Laughlin. Laughlin wrote the following words on the back of each of the notes: "For value received I hereby guarantee the within note, waiving notice of protest and demand." Under this he signed his name and delivered the notes to the plain-

tiff. This action was against the makers and the question presented was whether the form of the indorsement destroyed the negotiability of the notes and rendered them subject to defenses in the hands of the plaintiff. It was held that the purchaser was an indorsee, within the rule protecting an innocent purchaser for value of such paper before maturity against defenses good as between the original parties. The court pointed out that there are several ways to transfer title to commercial paper. Among other methods of negotiation, the holder may transfer the instrument by the ordinary form of blank indorsement; he may indorse without recourse, thereby decreasing his liability; or he may indorse and waive demand and notice, thereby increasing his liability. "It is therefore apparent," said the court, "that the inquiry whether one is an indorsee of negotiable paper does not depend upon the question whether the person negotiating it has incurred the precise obligation of an indorser. He may incur more liability, or less liability, or no liability at all; and yet the purchaser may be an indorsee, and protected as such. Nor is the form of the indorsement material. It is an indorsement though it is in terms of an assignment."

The question at hand was so clearly presented and decided in this case that we feel justified in making this further quotation from the opinion: "The only argument against the proposition that such an indorsement constitutes an indorsement according to the law merchant is that, by expressing the contract of transfer which is always implied from the mere fact of indorsement, the negotiator of the paper has manifested a purpose to destroy the negotiable character of such paper. But the courts, with the two exceptions above noted (Aniba v. Yeomans, 39 Mich. 171; Hatch v. Barrett, 34 Kans. 223) have refused to draw such an inference from the fact that an assignment in terms is written above the indorsement. On what principle, then, can it be said that the fact that a guaranty is written above the indorsement discloses a purpose to affect the negotiable character of the paper. Such a contract is an indorsement, and it is more. It is, indeed, under our statute exactly equivalent to an indorsement with waiver of demand and notice.

An indorser who is not entitled to insist upon demand and notice, or who, being so entitled, has been charged as indorser, is a guarantor of the payment of the instrument. But, even if we were of the opinion that his liability was different from that of an ordinary indorser,—even if we shall conclude that in some respects his obligation was more, and in other particulars less, onerous than that of one who indorses in blank,—still the fact would remain that he had transferred the legal title to the paper in a mode sufficient to transfer such legal title according to principles of common law, and that he had not evinced a purpose to destroy the negotiable character of the paper. * * * In view of the fact that it has long been the usage in this state

of persons and corporations engaged in the business of purchasing and discounting commercial paper to have the indorser sign a guaranty of payment, and in view of the further fact that the legal effect of such an indorsement is precisely the same as that of a simple indorsement with waiver of demand and notice, we would regard it as a very unwise and entirely unjustifiable decision to hold that such a negotiation of such paper was not an indorsement of it within the law merchant."

After citing the decisions which support the rule that a transfer, such as we have under consideration, is an indorsement within the rule, which shields bona fide holders from defenses good as between original parties, the court remarks: "We are aware that authorities can be found on the other side of the question." The contrary authorities cited by the court are Central Trust Co. v. First Nat. Bank, 101 U. S. 70; Omaha Nat. Bank v. Walker, 5 Fed. Rep. 399; Tuttle v. Bartholomew, 12 Met. (Mass.) 454; Lamourieux v. Hewit, 5 Wend. (N. Y.) 307; Taylor v. Buiney, 7 Mass. 481.

INDORSER'S WARRANTY OF GENUINENESS.

Editor Banking Law Journal. ——, OREGON, July 31, 1915.

DEAR SIR:—When a bank stamps on the back of the checks it collects from the drawee bank in the same city:

"Received payment through clearings July 1, 1915, First National Bank."

or

"Paid July 1st, 1915, First National Bank."

is this, in your opinion, a legal endorsement, and does it warrant the genuineness of previous endorsements, etc., the same as a plain endorsement?

Yours truly, CASHIER.

Answer:—In our opinion the indorsements above set forth warrant the genuineness of prior indorsements. The first of the two indorsements, set forth in the above inquiry, is an ordinary blank indorsement, coupled with a statement that the instrument indorsed was paid through the Clearing House on a certain date. This statement does not in any way affect the liability of the indorser nor the rights of the drawee bank. The second indorsement is likewise an ordinary blank indorsement and the fact that it recited payment of the instrument on a certain date is immaterial so far as the indorser's liability is concerned.

In answer to another inquiry, published in this issue, are given the decisions which hold that, where the payee or holder of an instrument signs a guaranty of payment on the back of the instrument, he is liable as indorser to the person to whom the instrument is transferred.

It may be mentioned that it is not necessary to indorse the instrument at all in order that the party transferring it may be held liable on a warranty of genuineness. The Negotiable Instruments Law provides that one who negotiates an instrument by delivery, without in-

dorsement, warrants, among other things, "that the instrument is genuine and in all respects what it purports to be." In such a case, however, the warranty operates only in favor of the immediate transferee. That is to say, if the holder of a check, indorsed in blank, and therefore capable of transfer by delivery, delivers it to A for value without indorsement, he warrants the genuineness of the instrument to A only and not to subsequent parties, into whose hands the instrument may come.

In the cases, wherein drawee banks have brought suit to recover the money paid on checks bearing forged indorsements, on the theory that the party receiving payment, by indorsing, warranted the genuineness of prior indorsements, the form of the indorsement has never, so far as we have been able to determine, been called into question on the ground that it was coupled with words showing that the check was paid on a certain date or was paid through the clearing house. The cases, in which a question as to the form of the indorsement has been raised, are those cases in which the indorsement is couched in the terms of an assignment, or is in the form of a guaranty of payment. In most of the cases, in which the indorsement was in the form of the indorsements, referred to in the above inquiry, the wording of the indorsement is not even stated in the opinion of the court. However, in the case of Wellington National Bank v. Robbins, 71 Kans. 748, 81 Pac. Rep. 487, it appeared that the check in question was indorsed in the following manner: "The Farmers' Bank, Wellington, Kansas, Paid September 6, 1898." No question was made as to the form of the indorsement and it was held by the court that this indorsement warranted the genuineness of prior indorsements.

THE HAGUE CONVENTIONS AND DECLARATIONS OF 1899 AND 1907.

Dr. James Brown Scott, Director of the Division of International Law of the Carnegie Endowment for International Peace, has brought together in volume form and edited the Conventions and signed Declarations of the First and Second Hague Conferences, together with tables of the signatures, ratifications, adhesions and reservations of the various powers. Dr. Scott has written a valuable introduction to his work and the book also presents the diplomatic correspondence relating to the call of the conferences. Because of its completeness and reliability it is a book which will undoubtedly attract wide attention at this time. The book contains 203 pages, including a particularly complete index, and is bound in cloth. It is published by the Oxford University Press, American Branch, 35 West 32d street, New York City.

LEWIS L. CLARKE.

Personality in banking is no doubt a valuble asset. No better illustration can be cited of this fact than the growth of the American Exchange National Bank of New York under the management of Lewis L. Clarke.

A little more than five years ago Mr. Clarke was elected president of this institution, and since that time the amount of the increase in deposits is greater than the total deposits were at any one time in the bank's career up to that date. In

LEWIS L. CLARKE,
President American Exchange National Bank, New York City.

1909, the year prior to Mr. Clarke's accession to the management, the deposits averaged about $35,000,000, on June 23, 1915 they were $88,856,937. These figures speak for themselves.

While Mr. Clark's personality has been the dominating factor he has been ably assisted by a force of efficient men on his offical staff to whom he gives due credit for their co-operation. They are: Walter H. Bennett, George C. Haigh, vice-presidents; Arthur P. Lee, cashier; A. K. de Guiscard, E. A. Bennett, Hugh S. McClure, W. B. Tallman, assistant cashiers.

ROBERT R. FORGAN, VICE-PRESIDENT OF THE NATIONAL CITY BANK, CHICAGO.

At a recent meeting of the board of directors of the National City Bank Robert R. Forgan was appointed a vice-president. Mr. Forgan is a son of David R. Forgan, president of the bank, and has for the past ten years been actively engaged in the commercial paper business in Chicago. He is a graduate of the Hill School,

ROBERT R. FORGAN.
Vice-President National City Bank, Chicago.

Pottstown, Pa., a preparatory school for Princeton, which university he also attended. After leaving Princeton he was for five years connected with the firm of Hathaway, Smith, Folds & Company, leaving there to become an active partner in the firm of the W. T. Rickards Company, commercial paper dealers of Chicago. Mr. Forgan intends to devote his future to banking, having disposed of his interest in the W. T. Rickards Company in order that he might give his entire attention to the affairs of this bank.

LOUIS G. KAUFMAN.

Mr. Louis G. Kaufman was recently made the recipient of an appreciative resolution which was tendered to him by the Board of Directors of the Chatham and Phenix National Bank, of which he is president.

The resolution was handsomely engraved and printed on parchment and bound in morrocco leather. It reads as follows:

"Resolved, that five years having now elapsed since the first election of Mr. Louis G. Kaufman as the president of the Chatham National, the directors of its

LOUIS G. KAUFMAN,
President Chatham and Phenix National Bank, New York City

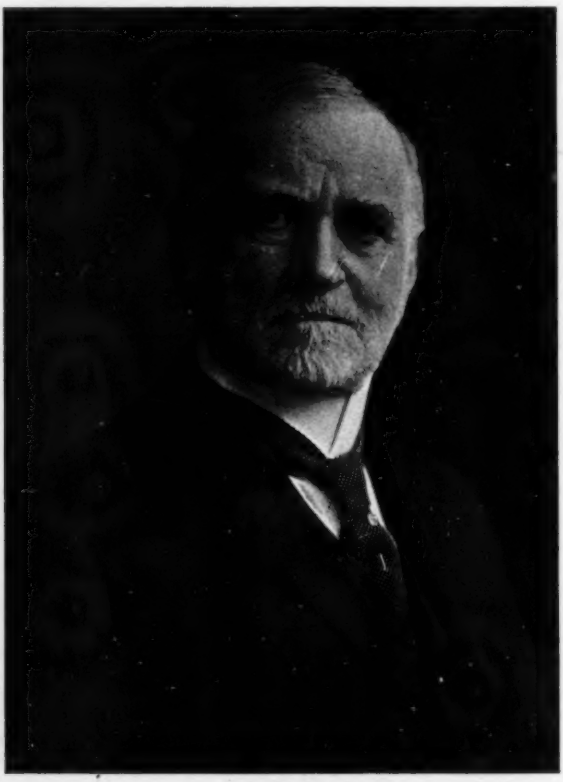
successor, the Chatham and Phenix National of New York, hereby express their appreciation of the great energy, rare skill and single-minded devotion which he has brought to the service of the institution, and their congratulations upon the increase in its strength, importance and ability to serve its patrons which has occurred under his administration. That this board, wishing for him many future years of success, pledges to Mr. Kaufman its loyal support in his efforts to promote the prosperity of this bank, and that the secretary of the Board deliver to our friend and president, over his signature, a copy of this resolution."

Besides being president of the Chatham and Phenix, Mr. Kaufman is Chair-

man of the Board of Directors of the Century Bank that recently absorbed the Security Bank. The rumor that the Chatham and Phenix intended surrendering its national charter to become a State Bank for the purpose of absorbing the Century has been officially denied by Mr. Kaufman.

SCOTT FOSTER.

Scott Foster, who has been President of the Peoples Bank since 1884 and director since 1876, resigned as president July 14, and was elected Chairman of the Board.



SCOTT FOSTER,
Chairman Board of Directors, Peoples' Bank, New York.

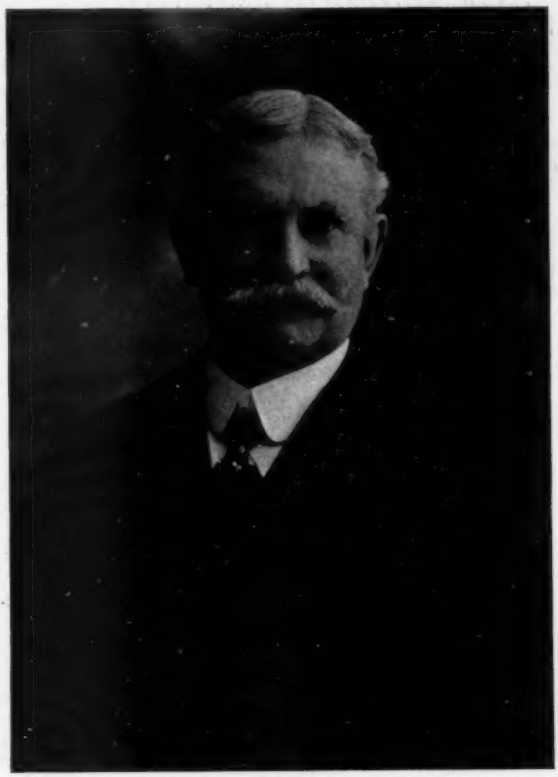
The Peoples Bank, under Mr. Foster's conservative management, has become widely known as a thoroughly safe and sound banking institution. Mr. Foster at various times has served on many Clearing House committees and is well known and highly regarded in banking circles. He is quite as well known in church and charitable circles in New York and for many years was President of the Presbyterian Union, and is still a member of the Finance Committee of the Presbyterian Foreign Board and Treasurer of the Northern Dispensary on Waverly Place and Christopher street and the North Eastern Dispensary on East 59th street, and is a member of the Chamber of Commerce, New York Historical Society, Metropolitan Museum of Art and many other societies.

He lives at 332 West 72d street, and the Foster family is one of the most prominent and respected on the west side.

He has for years been closely identified with the Rutgers Presbyterian Church where he and his sons, Eugene and Howard, of Foster & Adams, brokers, and his son, Hegeman of Foster and Lounsberry, brokers, are members.

He takes his greatest pleasure with his horses in the good old-fashioned way, and every clear day may be seen in his trap behind his faithful blacks with their flowing tails and white faces.

On Thursday, July 29th, the Board of Directors of the Peoples Bank tendered to him a luncheon in the dining room of the bank and presented to him an engraved



WILLIAM MILNE,
President Peoples Bank, New York.

set of resolutions of their appreciation of his services and a beautiful silver loving cup with their good wishes, and expressed the desire that they should have him on the board for many years to come.

WILLIAM MILNE.

At a recent meeting of the Board of Directors of the Peoples Bank, New York City, William Milne was elected President succeeding Scott Foster who was elected Chairman of the Board.

Mr. Milne was born in New York in the old 9th ward, a few blocks from the

bank and entered its employ when a lad in 1870. He was made cashier in 1878 and has been active in that position ever since.

When he entered the Peoples Bank he also joined the 37th Regiment, which was afterward consolidated with the 71st Regiment, as a drummer boy and through his ability, interest and popularity won his way through all the official positions and became Captain—resigning in 1878. He is a man of great geniality and is well known to old New Yorkers. He now makes his home in Rye, New York, where he has built a beautiful house and takes great interest in his extensive conservatories.

Mr. Milne, as President, rounds out a business career in an ideal way, and with the hearty backing of the Board of Directors the bank is assured of the same careful conservative management that has contributed so largely to its high financial standing.

It is one of the oldest State Banks in New York, having been organized in 1851; and is a charter member of the N. Y. Clearing House, has always been noted for its conservative management and is regarded in banking circles as a thoroughly sound institution. It has a capital of $200,000 and a surplus all earned of $460,000 and has never passed a dividend.

THE CHASE NATIONAL BANK OF NEW YORK.

The directors of the Chase National Bank of New York at a meeting on July 28, elected Guy E. Tripp, chairman of the Westinghouse Electric & Manufacturing Company, a director to succeed the late Henry M. Conkey. Alfred C. Andrews, formerly assistant cashier, was appointed cashier in place of Mr. Conkey. George H. Saylor and M. Haddon Howell, for many years connected with the credit department of the bank, were appointed assistant cashiers. The official staff of the bank is as follows: A. Barton Hepburn, chairman; Albert H. Wiggins, president; Samuel H. Miller and Edward R. Tinker, vice-presidents; Alfred C. Andrews, cashier; Charles C. Slade, Edwin A. Lee, William E. Purdy, Charles D. Smith, William P. Holly, George H. Saylor and M. Haddon Howell assistant cashiers.

OUTLINE OF INTERNATIONAL LAW.

The Outline of International Law is the title of a book by Arnold Bennett Hall, J. D., Assistant Professor of Political Science in the University of Wisconsin, recently published by Lasalle Extension University, Chicago, Ill. The volume is a brief, non-technical statement of the underlying principles of international law intended for the general student and reader who is interested in the world problems of the day, rather than for the specialist. The book is written in a clear and interesting style, which commands the interest of the reader, and it is well adapted to its purpose. It is a book which should have a host of readers in these times, when such terms as "blockade," "contraband," "neutrality" and "visit and search," are met with daily in the papers and magazines. A series of appendices present the Final Act of the Second Hague Conference and the various Hague Conventions. The book contains 255 pages and is bound in cloth.

ALFRED C. ANDREWS.

The advancement of Alfred C. Andrews to the cashiership of the Chase National Bank is a recognition of merit. Although only 39 years old, Mr. Andrews has been in the service of the bank nearly 21 years. He graduated from the public schools and attended the College of the City of New York prior to entering the service of the bank as a messenger at the age of 19 in 1894. Diligently attending to each

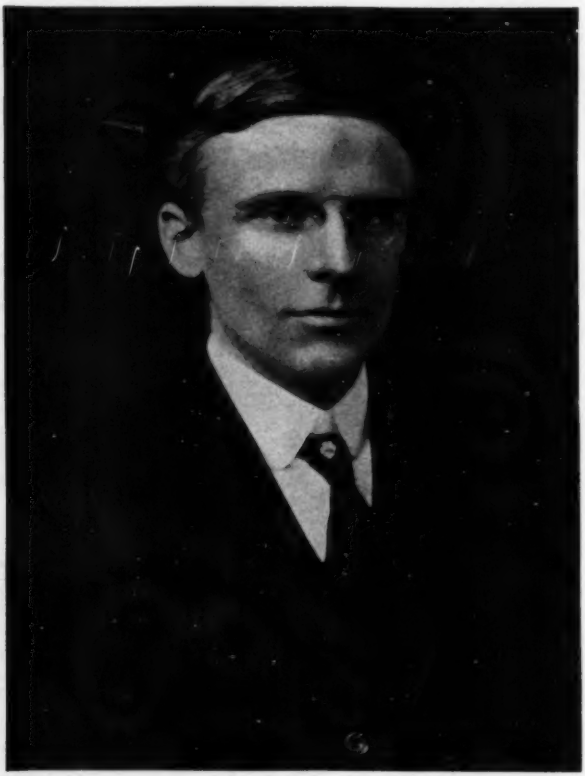
ALFRED C. ANDREWS,
Cashier Chase National Bank, New York City.

task assigned him, he gained promotion and became discount clerk. Mr. Andrews became an assistant cashier in 1908. His friends predict that he will fill the position of cashier with the same acceptance as in minor offices. The importance of the position may be guaged by the fact that during the past ten years the business of the institution has grown 300 per cent. Its capital, surplus and net undivided profits aggregate nearly $15,000,000. deposits $179,461,000, and total resources $197,448,000.

JOSEPH WAYNE, JR.

August 4 marked the 25th anniversary of Joseph Wayne's service in the Girard National Bank of Philadelphia. Mr. Wayne was elected President in October, 1914. On August 3d the directors adopted the following resolution of appreciation:

"Resolved, That the directors do hereby express their deep appreciation of the services rendered to this bank by its President, Joseph Wayne, Jr., throughout the twenty-



JOSEPH WAYNE, JR.
President Girard National Bank, Philadelphia.

five years in which he has been connected with its affairs. In the various positions he has occupied he has performed every duty devolving upon him with the utmost fidelity to the bank's interests, and his energy and ability have contributed in a marked degree to its prosperity and the financial standing it now enjoys in this community and in the country at large. It is our earnest hope that he may for many years continue in the position he now so ably fills President of this bank."

CROP AND BUSINESS CONDITIONS AS REPORTED BY THE CHAMBER OF COMMERCE OF THE UNITED STATES.

BETTER BUSINESS CONDITIONS.

WASHINGTON, D. C., August 8.

The former feeling of apprehension, of "something is going to happen" because of the European war, has almost entirely disappeared, according to a special report submitted today by the Committee on Statistics and Standards of the Chamber of Commerce of the United States. Even with the possibility of our being entangled in this gigantic world conflict, there still remains a pronounced belief that notwithstanding such untoward conditions business is bound to improve and show distinct advancement. Confidence in the future, according to this committee, of which A. W. Douglas of St. Louis is chairman, has grown apace with the steady progress of the crops and the slow but continual improvement in industrial affairs.

In the main, the thoughts and interests of the great mass of producers, whether in the city in industrial life, or in the countryside in agricultural pursuits, are in their immediate local happenings and in all constructive measures which will benefit their particular communities rather than either the great national or international problems. There still continues, however, much conservatism and caution in buying and in new commitments. The feeling seems to be that it is best to wait until the results of the crops are known beyond question before venturing in a more extended way, and as a consequence stocks of merchandise throughout the country continue light.

BENEFIT TO CROPS EXCEEDS RAIN DAMAGE.

The weather has been the keynote of the crop situation for the past six weeks. Since the first of June there have been continued, excessive rains in almost all sections of the country, the exceptions being few and distinctly local. The effect upon the crops has been both good and bad, but the benefit has far exceeded the damage, as serious as has been the latter in some sections. This illustrates strongly the statement made before in reports submitted by the National Chambers committee, that, in general, wet years are years of bounteous crops; while unduly dry years during the growing season invariably are marked with serious crop disaster.

VARYING COMMERCIAL AND INDUSTRIAL CONDITIONS.

Lumber interests are everywhere very quiet. A general dearth of building outside of the large cities is having a very depressing effect on the sale of all building material.

The conditions of mining vary sharply as to the thing mined. Copper mines are running full time and new ones are opening up. Zinc and lead mines are exceedingly busy, and the mining of iron ore is improving.

Coal mining is everywhere dull, largely because of slack demand from the railroads and the slow business in most manufacturing. Slate mining in Pennsylvania is at low stage because of lack of demand. Silver mining suffers because of low prices of silver; and gold mining is not much better save in a few favored localities.

There is but little business in the naval stores because of lack of demand. Phosphate mines of Florida still remain closed because of the European war. Unfavorable reports come alike from the fisheries of Oregon, Washington, the Gulf and along the Atlantic Coasts.

WAR ORDERS HELP SOME MANUFACTURERS.

Manufacturing varys much according to the articles made, though in general is very quiet. Steel and iron business shows distinct improvement with increasing orders. Business of cotton and woolen mills is only fair. Those manufacturers in different sections who have orders for war contracts are exceedingly busy. Furniture business in Michigan, northern Indiana and Chicago is alike dull. Paper mills are running only three-quarters time. Cement factories and those making bricks and tile re-

port only fair business. The oil industry as a whole is exceedingly dull. There is very little demand for railroad ties.

PROGRESS IN FIGHTING THE FOOT AND MOUTH DISEASE.

In general because of abundant feed and low prices, the raising of live stock is a growing industry in all sections of the country. From the South come reports of increasing numbers of animals. The greatly increased raising in all sections this year of grain and forage crops points to a large number of cattle and greater attention to stock raising and to dairy products. The foot and mouth disease seems to have been entirely stamped out for the time being, and the campaign of sanitation and vaccination against hog cholela has had decidedly favorable results. Hogs are increasing in numbers because of abundant feed, and due to diminishing ravages of hog cholera.

In every section of the country, without exception, the dairy industry is spoken of as a growing one and receiving increasing attention from the farmer. Mules and horses are in good demand and at desirable prices. This industry has been favorably affected by the European war.

ESTIMATED PROBABLE WHEAT YIELD.

Dealing specifically with crops the report goes on to say that stimulated by the abnormal demand of the warring nations of Europe, the wheat acreage this season in this country increased beyond any previous planting. It was approximately twelve and twelve and one-half per cent. greater in winter wheat and ten per cent. in spring wheat than in 1914. The continued wet weather delayed growth, harvesting and threshing. Much damage was done to the standing grain in the lowlands. Many fields were washed away entirely by the floods, and subsequent damage accrued in shocks because of sprouting and too much moisture. These accumulated results have made necessary a somewhat reduced estimate of both spring and winter wheat, and based on the reports under consideration, the estimated probable yield will be 948,500,000 bushels.

HILL COUNTRY CORN CONDITIONS OFFSET LOWLAND DAMAGE.

While Indian corn needs an abundance of moisture for its complete growth and development, it has had a superabundance this season. The result is that in the bottoms the crop in many sections is hurt beyond repair. On the uplands and the hill country the conditions, however, are of the very best and will do much to repair the damage done in the lowlands. On these hills, stalks nine to ten feet with two ears to each stalk are common and two weeks ago corn was tasseling as far north as the southern line of Iowa and along that latitude.

In the northern sections, especially in Minnesota, Wisconsin, the two Dakotas, northern Nebraska and the Penninsula of Michigan, the growth of corn has been much retarded by continued cool, wet weather. This is a condition that no amount of favorable weather from now on can altogether remedy. The outlook therefore in those sections is not encouraging. The present estimate is for a crop of approximately 2,935,000,000 bushels, or about ten per cent. greater than last year. Of this amount the fifteen Southern states will produce about thirty-five per cent. as against an average yield of thirty per cent. in the past. South of the southern line of Missouri, the corn crop is made and has suffered but little damage save in extreme southern Texas—in the San Antonio region and south of there where it was cut short by drought during the month of June.

PROBABLY A RECORD OAT PRODUCTION.

Oats are particularly susceptible to damage by wet weather, but despite this the outlook now is for a yield of about 1,400,000,000 bushels closely rivalling the record breaking production of 1912. Of the minor grains it can be said that they are about of the average of normal production, and of potatoes that the crop will closely approximate that of last year.

COTTON CROP IN GOOD SHAPE.

The reduction in the cotton acreage as compared with last year is approximately sixteen per cent., and combined with this is about forty per cent. decrease in the use of fertilizers; the use of these being largely confined to the South Atlantic states. A

tentative long distance forecast on so uncertain a matter as the total yield of cotton indicates a production this year of about 12,000,000 bales exclusive of linters which will probably run about 600,000 more bales. As a whole, the crop has done well and is in generally good condition, though needing rain in central and southern Texas. Owing to the wet season there are a number of complaints of boll weevil, though it is not possible yet even to approximate the damage done.

Even with low priced cotton, however, the situation in the South will be radically different from last year. Enforced economies have everywhere prevailed in the agricultural sections, old material and implements are being used in cultivating, and the cotton crop this year will be the cheapest raised in the way of production for many years. Consequently the South will be in a much better condition to stand low priced cotton this year than last.

ABUNDANT FRUIT YIELDS.

It can be said in general of fruit that it is both abundant beyond precedent, and very cheap. So much so in fact that it has not been generally profitable to the producer. However, in practically all sections the apple crop will be somewhat less than last year, largely due to the fact that apple trees never bear heavily two years in succession.

Peaches will probably have a larger yield than in 1914 and conditions are uniformly favorable in practically all sections where grown, though locally in some states they were hurt by cold and frost earlier in the year.

CROPS OF GENERAL INTEREST.

The outlook is for a larger yield of rice. Tobacco has shown great improvement and will probably make a slightly larger yield than in 1914. In many sections the first cuttings of alfalfa were entirely ruined by the rains, but there has been decided improvement in the second and third cuttings. Hay promises a large crop in most sections. In general forage for all live stock will be more abundant than ever before.

While the condition of hops is above the average in New York, the market is extremely dull for lack of demand is said to be caused by the spread of the prohibition sentiment in the West.

The peanut crop in Virginia, North Carolina, and Alabama is in excellent shape.

A MERITORIOUS COMMENDATION.

THE FIRST NATIONAL BANK OF INDIANOLA.

INDIANOLA, IOWA, August 11, 1915.

The Banking Law Journal, New York City.

Gentlemen:

Enclosed herein find my check for $8 in payment of my subscription to December, 1915, and in payment of a new subscription to be sent to Prof. E. L. Miller, Dean of the Commercial Department of Simpson College of this city, with my compliments.

I have a Digest, and any time Prof. Miller or his students wish to get additional information on any case they can do so by calling at the bank.

The BANKING LAW JOURNAL is one of the most interesting journals that comes to my desk, and no banker should be without it.

Yours very truly,

(Signed) WILL A. LANE, Cashier.

AN IMPORTANT RESOLUTION.

At the recent convention of the Associated Advertising Clubs of the World in Chicago an important resolution was presented to the executive committee by Mr. M. E. Holderness, assistant cashier of the Third National Bank of St. Louis, and Mr. John Ring, Jr., publicity manager, Mercantile Trust Company of St. Louis, which is as follows:

To the Executive Committee of the Associated Advertising Clubs of the World:

Whereas, There was approximately one hundred delegates and visitors, representing the publicity departments of various financial institutions throughout the United States, in attendance upon this convention; and

Whereas, It is generally believed that a departmental composed of banks, trust companies and investment bankers would be of great mutual benefit to the associated clubs and financial interests:

Therefore, We the undersigned, representing the unanimous desire of the above-referred to delegates, do respectfully petition the creation of such a department. We believe that the creation of this department would increase attendance of such interests at the national convention, as the membership of clubs throughout the country embraces publicity men from many financial institutions. In consideration of these resolutions, it should be born in mind by your committee that many of those to whom benefit from such a departmental would accrue are national advertisers. (Signed)

M. E. Holderness, Assistant Cashier, Third National Bank, St. Louis, Mo.
John Ring, Jr., Publicity Manager, Mercantile Trust Co., St. Louis.
G. Prather Knapp, Publicity Manager, Mississippi Valley Trust Co., St Louis.
Byron W. Moser, Secretary, St. Louis Union Trust Co., St. Louis.
H. M. Morgan, Secretary, American Trust Co., St. Louis.
Guy Cook, First Trust & Savings Bank, Chicago, Ill.
W. W. Woodson, Cashier, Central Texas Exchange Nat. Bank, Waco, Texas.
N. B. Jackson, Cumberland Valley National Bank, Nashville, Tenn.

When it is taken into consideration that there are about one hundred delegates and visitors to this convention representing publicity departments of various financial institutions throughout the United States, it will be seen what an important factor publicity departments of banking and financial institutions are coming to be, and the most progressive of these institutions are those that are employing experienced men to handle this department. In many of our leading banks and trust companies the publicity managers work requires the most careful study, as he is given the power to expend thousands of dollars a year, and it is up to him to get returns for his expenditures.

For this reason he must be as skilled in the methods he employs as any official in the institution.

A skillful publicity man takes the view that advertising and publicity are an investment, and that if their department does not produce proper results from the amount invested he will be held accountable.

A number of these gentlemen in charge of this department of various institutions have demonstrated the real value of printers ink when properly used.

The convention of the Associated Advertising Clubs was the largest thus far held by that association, there being over 5000 delegates registered, which is the largest convention of business men ever held in America. It is to be hoped that the banking and financial institutions of this country will become more closely identified with this great movement as the opportunity is now before them.

The fact that the banking and financial interest are among the few important business elements that are not properly represented in the Associated Advertising Clubs, is evidence that they should wake up.

THE ROBERT MORRIS CLUB FOR BANKERS.

This is an organization formed by the National Association of Credit Men, and its membership is composed of credit men of banks throughout the country. In a general letter sent out by the National Association of Credit Men for August, regarding this club the letter says:

"An economist has said that credit stimulates commerce and the banks stimulate credit. The close relation of banking to liquid and current credits is generally recognized, and the effect that good or bad banking has upon a nation's credit prosperity has encouraged a conservatism among bankers so that they have the reputation of being the last to adopt new ideas.

"Twenty years ago but two or three banks in the entire country had separate and systematically organized credit departments; since then many banks in our larger commercial cities have organized such departments, but they are still the exception in the smaller or suburban communities.

"As an association, we have felt that something specific should be done to arouse greater interest upon the part of banks in credit work, particularly as related to commercial credits. The Federal Reserve System makes this step imperative in authorizing certain requirements which increase the need in banking institutions of definite and well systemized credit departments. To this end, at a conference of the representatives of credit departments of banks at the Salt Lake City convention, a permanent organization was effected under the name 'The Robert Morris Club.' J. K. Calhoun, Corn Exchange National Bank, Chicago, was elected president; A. F. Maxwell, National Bank of Commerce, New York, vice-president; and Alexander Wall, First National Bank, Milwaukee, secretary-treasurer.

"The purpose is to bring together credit managers and their assistants in banking institutions for a more definite study of credit problems and the development of sincere relations between their departments and those of mercantile institutions. The project is progressive and sound. All bank members are eligible to take out special membership in the Robert Morris Club and are urged to do so at once."

This same letter has this to say about the financial statement and the Federal Reserve Bank:

"The Federal Reserve Board has promulgated a new regulation requiring that member banks applying for rediscount must certify that they have on file recent statements of the makers of the paper offered for rediscount, which can be reviewed by the board as it may direct.

"Exceptions are (1) In small banks, when the amount of anybody's paper is not large, and where it is not customary for the bank to require a statement of the borrower, it shall not be necessary to require such statement to make paper eligible for rediscount, provided the paper rediscounted does not exceed $5,000 for any one borrower or 10 per cent. of the rediscounting bank's capital. (2) Where borrowers' discounted paper is double name, that is, has signatures of both buyer and seller of goods covered by the paper. (3) Where rediscounted notes are secured by warehouse receipts covering readily marketable staples.

"From the credit man's standpoint, it is a matter of interest that the Federal Reserve Bank is raising the position of financial statements, which means the increasing need of intelligent understanding of how to make up statements.

"To those who know what the National Association of Credit Men has been doing for the past fifteen years to accustom men to the giving and requiring of financial statements, it will not seem presumptive to say that the action of the Federal Reserve Board makes a substantial second to the Association's efforts. Undoubtedly also the board's action will result in making the financial statement a mere sacred document amongst those who would falsify through it."

The directors of the club are as follows: Thomas J. Kavanaugh, Mississippi

Valley Trust Co., St. Louis; Norman I. Adams, National Shawmut Bank, Boston; Freas B. Snyder, First National Bank, Philadelphia; C. H. Dodd, Dexter Horton National Bank, Seattle; Frank Seed, First National Bank, San Francisco; H. L. Chittenden, Peninsular State Bank, Detroit; J. K. Calhoun, Corn Exchange National Bank, Chicago, President of the club; A. F. Maxwell, National Bank of Commerce, New York, vice-president of the club; Alexander Wall, First National Bank, Milwaukee, secretary and treasurer.

AN EMBARGO IS UNNECESSARY.

Editor Banking Law Journal. NEW YORK, August 10, 1915.

The shipowners who venture within the war zone with cargoes of any kind do so at their own risk of lives and cargoes. The German and Scandinavian countries have never been heavy purchasers of American food products, being essentially self producing countries. Germany has never taken much over two million bales of cotton per year, and her purchases of meats and provisions have been moderate. Cotton is not contraband of war. The great majority of exports go to England and France, in which countries manufactures are restricted by the necessities of war. Hence the most of the decline in exports is due to inability to employ the raw material in manufactures, and as to meats, to the blockade of the English, French and German ports. Neutral ships entering the war zone must abide by the conditions imposed as to contraband of war. But there is a natural irritation over the restrictions upon the ocean movement of merchandise and provisions that is not classed as contraband. The British orders in council provide that such goods of neutral ownership, if destined for Germany and without a pass, must be discharged in a British port, but that the goods, if not requisitioned by the British government, shall be restored to the owner upon such terms as the prize court may order. The same rule applies to cargoes sent to other than German ports, but with an enemy destination in time. Great Britain claims the right to stop even cargoes on neutral ships destined to or originating in territory owned or occupied by Germany, contraband or not. Under this rule, Americans have incurred great losses upon cargoes from Belgium ports, needed for the textile industries here. Washington is being urged to protest against the orders in council which confiscate property of American importers and exporters in European trade. The consequent correspondence between the two governments is amicable, but unsatisfactory. Great Britain is liable to suspicion of commandeering for her own purposes and taking over at her own price large quantities of cotton and other raw materials, as well as of provisions; the price on the raw materials so taken over being in the nature of supplies which upon the return of peace would enable the mannfacturers of that country to anticipate Europe in manufacturing and re-establishment of export trade. But it would be foolish to stop all trade or attempts to trade with Europe by means of an embargo or proclamations of non intercourse, as urged b pro-Germany influences in this country. What right has this government to stop its people in making money by trade abroad?

D.

RESERVE AGENTS APPROVED IN JULY.

The following banks were approved as Reserve Agents in July:

Chatham & Phenix National Bank, New York, for Boston Nat. Bank, South Boston, Va.; State Nat. Bank, Ardmore, Okla.

Hanover National Bank, New York, for American Nat. Bank, Rogers, Ark.; Lake Placid Nat. Bank, Lake Placid, N. Y.; Overland Nat. Bank, Boise, Idaho.

Mechanics & Metals National Bank, New York, for First Nat. Bank, Butte, Neb.; Okemah Nat. Bank, Okemah, Okla.; First Nat. Bank, Olanta, S. C.; Citizens Nat. Bank, Arkadelphia, Ark.; Clinton Nat. Bank, Clinton, Mo.

National Bank of Commerce, New York, for Columbus Nat. Bank, Columbus, Miss.; First Nat. Bank, Perry, Fla.; Peoples Nat. Bank, Orlanda, Fla.

Irving National Bank, New York, for Bliss Nat. Bank, Bliss, N. Y.

Chase National Bank, New York, for First Nat. Bank, Capac, Mich.

Union Exchange National Bank, New York, for American Nat. Bank, Louisville, Ky.

Atlantic National Bank, New York, for First Nat. Bank, Boston.

Philadelphia National Bank, Philadelphia, for Farmers & Merchants Nat. Bank, Cambridge, Md.

Corn Exchange National Bank, Philadelphia, for First National Bank, Northfork, West Va.; Callicoon Nat. Bank, Callicoon, N. Y.

Third National Bank, St. Louis, for First Nat. Bank, Morrilton, Ark.

National City Bank, Chicago, for Bank of Mobile, N. A., Mobile, Ala.; Overland Nat. Bank, Boise, Idaho.

Continental & Commercial National Bank, Chicago, for Farmers Nat. Bank, Virginia, Ill.

First and Security National Bank, Minneapolis, for First Nat. Bank, Lyle, Minn.

THE METROPOLITAN TRUST COMPANY OF NEW YORK.

Under the management of Mr. George C. Van Tuyl, Jr., who was elected president in the early part of 1914 the Metropolitan Trust Company has made remarkable progress, and Mr. Van Tuyl has received many congratulations from friends all over the state. The following figures show the growth of deposits in two years: July 1, 1913, they were $19,000,000, July 1, 1914, $29,000,000 and July 1, 1915, $44,000,000 an increase of a considerable over 100 per cent.

It will be remembered that Mr. Van Tuyl was the father of the New York State Banking law that went into effect in April, 1914. Missouri has already copied the law, and there is no doubt that other states will follow.

Mr. Van Tuyl was the State Superintendent of Banks when the law was framed and he labored zealously for its adoption.

HENRY MARKS CONKEY.

Henry M. Conkey, cashier of the Chase National Bank of New York, died after a brief illness at the age of thirty-seven on July 24. Mr. Conkey was born near Canton, N. Y. He prepared for college at Canton Union School and entered St. Lawrence University with the class of 1896, graduating three years later with the degree of B. A. He entered the employ of the Chase National in 1901. His advancement to greater possibilities was only a matter of time. In 1905 he was made manager of the credit department and in 1908 was appointed an assistant cashier. He became cashier of the bank in 1910. Mr. Conkey was a trustee of St. Lawrence University, a member of the St. Lawrence Society, the Alpha Tau Omega Fraternity, and of the following clubs: Union League, Bankers of America, Upper Montclair Country, and St. Andrews Gold Society.

COMPARATIVE NEW YORK BANK STATEMENT.

The following table shows the Loans, Cash, Reserves and deposits of the associated banks, reported to the New York Clearing House for the week ending August 7, 1915:

BANK.	*Loans, Discounts, Investments etc. average.*	*Gold, Silver & Legal Tenders Average,*	*Reserves with Legal Depositories Average.*	*Legal Net Deposits Average.*		
Members of Federal Reserve Bank.						
Bank of N. Y. N. B. A...	$33,975,000	$3,765,000	$2,391,000	$32,477,000	....	....
Merchants' National.....	28,603,000	3,039,000	2,036,000	27,814,000	....	....
Mechanics & Metals Nat..	102,533,000	31,344,000	8,465,000	123,012,000	....	....
National City	253,206,000	93,681,000	27,998,000	307,214,000	....	....
Chemical National.....	30,650,000	6,346,000	3,148,000	28,810,000	....	....
Merchants' Exch. National	10,641,000	1,277,000	897,000	10,730,000	....	....
Nat. Butchers & Drovers..	2,038,000	155,000	123,000	1,653,000	....	....
American Exchange Nat.	76,378,000	9,165,000	6,185,000	77,472,000	....	....
Nat. Bank of Commerce..	186,689,000	25,066,000	13,501,000	179,411,000	....	....
Chatham & Phenix Nat...	28,500,000	2,835,000	2,096,000	28,816,000	....	....
Hanover National.....	103,352,000	26,000,000	8,999,000	119,681,000	....	....
Citizen's Central National	26,384,000	2,522,000	2,064,000	24,460,000	....	....
Market & Fulton Nat.	9,128,000	2,275,000	926,000	9,395,000	....	....
Importers & Traders Nat.	31,774,000	3,143,000	2,169,000	28,159,000	....	....
National Park.....	121,172,000	16,491,000	9,332,000	123,199,000	....	....
East River National.....	1,909,000	261,000	150,000	1,920,000	....	....
Second National.....	15,435,000	1,570,000	1,015,000	12,446,000	....	....
First National	142,371,000	18,448,000	10,336,000	133,800,000	....	....
Irving National.....	53,590,000	13,246,000	4,573,000	62,976,000	....	....
N. Y. County National...	9,739,000	1,057,000	690,000	9,529,000	....	....
Chase National	138,138,000	28,459,000	12,692,000	164,581,000	....	....
Lincoln National	15,342,000	4,054,000	1,338,000	17,394,000	....	....
Garfield National	8,531,000	1,890,000	771,000	8,773,000	....	....
Fifth National	4,452,000	479,000	316,000	4,448,000	....	....
Seaboard National . ..	30,049,000	6,167,000	3,344,000	35,835,000	....	....
Liberty National	38,156,000	6,077,000	2,924,000	41,948,000	....	....
Coal & Iron Nat'l Bank ..	7,786,000	892,000	549,000	7,719,000	....	....
Union Exchange Nat... ..	10,667,000	999,000	775,000	10,137,000	....	....
Nassau Nat. Bank, Bklyn.	8,700,000	905,000	588,000	7,993,000	....	....
Broadway Trust Co.....	15,983,000	1,884,000	1,338,000	17,099,000	....	....
State Banks Not Members of Federal Reserve Bank.						
Bank of the Manhattan Co.	40,630,000	13,142,000	.....	47,600,000	....	....
Bank of America.....	31,113,000	6,190,000	.....	29,664,000	....	....
Greenwich.....	10,529,000	1,887,000	627,000	11,585,000	....	....
Pacific.....	4,972,000	1,088,000	.....	4,735,000	....	....
People's.....	2,098,000	339,000	140,000	2,341,000	....	....
Metropolitan Bank.....	11,644,000	2,008,000	.....	9,665,000	....	....
Corn Exchange	76,666,000	18,067,000	4,000,000	90,315,000	....	....
Bowery.....	3,503,000	379,000	187,000	3,124,000	....	....
German-American.....	4,729,000	799,000	200,000	4,582,000	....	....
Fifth Avenue.....	14,620,000	3,627,000	.....	15,646,000	....	....
German Exchange.....	3,591,000	685,000	208,000	3,467,000	....	....
Germania	6,025,000	739,000	318,000	5,960,000	....	....
Bank of the Metropolis...	13,466,000	2,442,000	.....	12,808,000	....	....
West Side Bank	4,550,000	598,000	240,000	4,281,000	.. .	....
N. Y. Produce Exchange.	11,802,000	3,628,000	.....	13,679,000	....	....
State Bank	19,156,000	2,177,000	1,263,000	21,046,000	....	....
Security Bank	17,175,000	1,757,000	880,000	18,315,000	....	....
Totals	$1,822,140,000	$372,044,000	$391,720,000	$1,957,704,000		